TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1912.

No. [redacted]7

JAMES W. BEACH, APPELLANT,

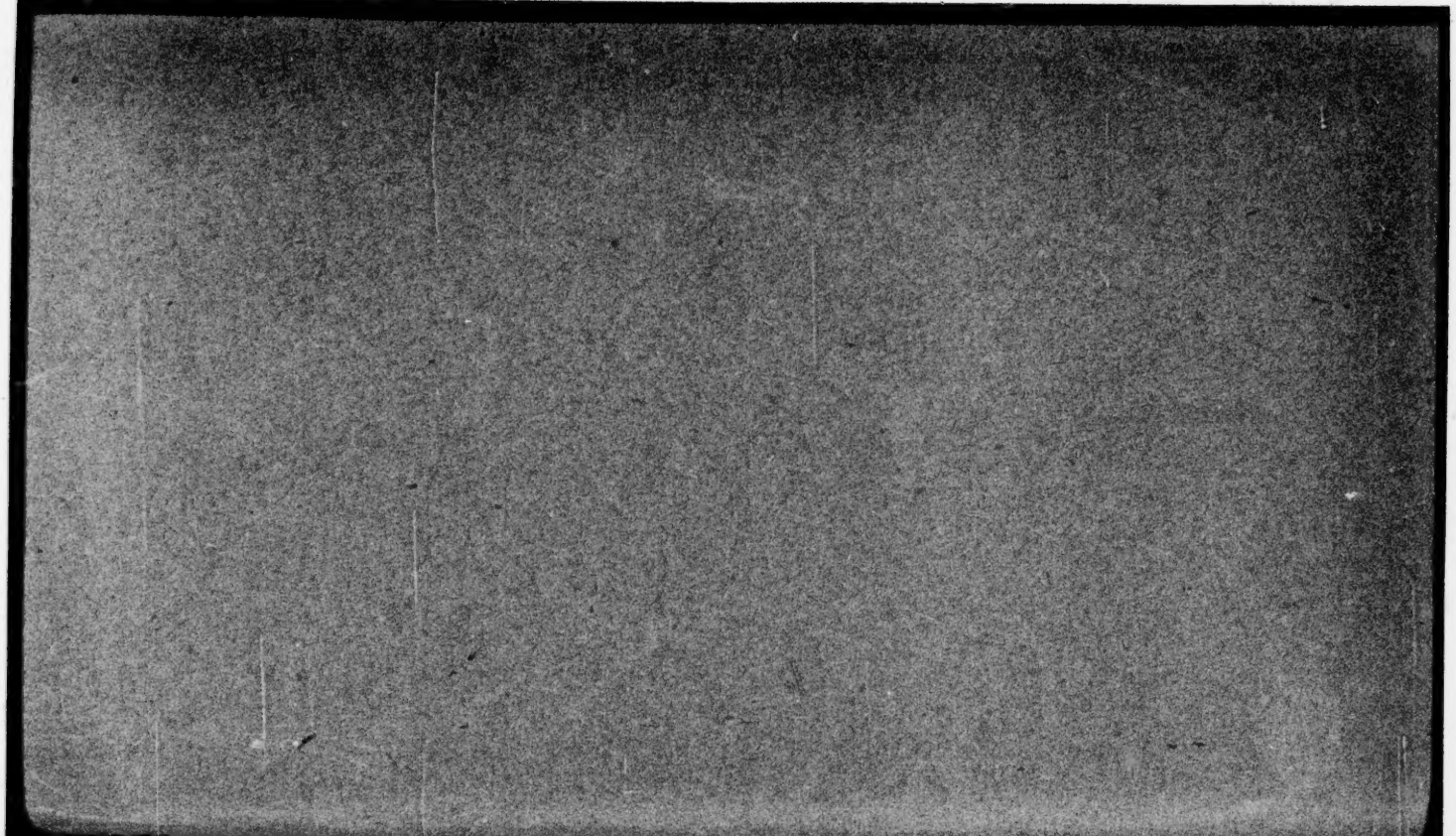
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 2, 1912.

(21,749.)



(21,749.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 87.

JAMES W. BEACH, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

No. 21255.

JAMES W. BEACH
v.
UNITED STATES.

I. *Petition and Amended Petition.*

On the 25th day of February, 1899, the claimant filed his original petition.

Subsequently to wit, on the 12th day of February, 1904, the claimant, by leave of Court, in lieu of said original petition, filed his amended petition, which is as follows:

2 UNITED STATES OF AMERICA,
District of Columbia, ss:

In the Court of Claims (United States).

No. 21255. Claim.

JAMES W. BEACH, Claimant,
vs.
THE UNITED STATES OF AMERICA.

Amended Petition.

Filed Feb'y 12, 1904.

To the Honorable the Chief Justice and Judges of the Court of Claims:

Now comes the claimant, by leave of court, according to its rules and without prejudice, amends his petition in said cause filed in such manner that said petition as amended will read as follows, that is to say:

Copy of Petition.

To the Honorable the Chief Justice and Judges of the Court of Claims:

The undersigned, James W. Beach, your Petitioner, respectfully represents that he is a citizen of the United States residing in the City of Chicago in the State of Illinois, and that he has resided in said City for more than thirty years last past, and that he is a member of the Bar engaged in the practice of his profession as an Attorney at Law in said City.

3 Your petitioner respectfully alleges that prior to the 26th day of July, A. D. 1892, he had invented and received Letters Patent issued to him by the United States for, to wit: certain improvements in Pneumatic Conveyers and that said Letters Patent were then in full force and effect and that your petitioner was then the owner thereof except as to certain states and territory by him sold to the Beach Pneumatic Conveyer Company (a corporation organized under the laws of the State of Illinois); that on, to wit: said 26th day of July, A. D. 1892, the then postmaster general of the United States, pursuant to law, advertised, to wit: for bids or proposals under seal, which said advertisement was and is entitled "Mail Service by Pneumatic tubes or other systems" and required that the description therein mentioned "Be accompanied by a proposal offering to license to or otherwise invest in the United States the right to use the tube or device to lease by the year or to sell, assign and transfer it to the United States as a purchaser."

Your petitioner further represents that his said invention covered by said Letters Patent was suitable for the purpose set forth or mentioned in said advertisement.

Your petition further alleges that in apt time and in due form (he being then and there owner of and as aforesaid) he, your petitioner, executed at Chicago in the State of Illinois and there mailed to and fully complied in every material respect with the requirements of said advertisement and filed with said Postmaster General his certain proposal in writing under seal (as required by said advertisement), therein and thereby offering, to wit: to license to or otherwise invest in the United States the right to use the said tube

4 or device (conveyer) to lease by the year or to sell and assign and transfer it to the United States as a purchaser for and in consideration of a certain sum of money in said proposal in writing under seal mentioned to be paid therefor by the United States, being, to wit: the sum of Twenty Million Dollars.

And your petitioner further respectfully alleges that in law as your petitioner is advised the said instrument in writing, being said proposal by him so made and executed as aforesaid to the United States of America under the seal of your petitioner, became, was and is by reason of said instrument in writing being so executed by, to and as aforesaid under seal in fact a deed and the same was and is irrevocable and that "Equity regards as done that which was agreed to be done."

And your petitioner further alleges that said deed or proposal has never been returned or offered to be returned to your petitioner, nor has the United States of America or any officer thereof ever offered to reconvey to your petitioner said Letters Patent or any interest therein and said deed or proposal has been retained by and is and remains wholly under the control of the said United States and has so been and remained since, to wit: the 7th day of September, A. D. 1892, and as your petitioner is advised wholly and completely beyond the power and authority in the premises of your petitioner and that by reason thereof your petitioner was and is wholly deprived

of all power over said Letters Patent and of all power to maintain suit for infringement of said Letters Patent.

Your petitioner further respectfully alleges that the said United States has kept and retained and still retains said deed, being
5 said proposal in writing as aforesaid and your petitioner is informed and believes that the Government of the United States has since the time last aforesaid entered into and is now either directly, or indirectly, through contracts or otherwise with certain persons or corporations, in the use and enjoyment of the said device or invention of your petitioner, being the invention mentioned in said proposal and described in the description thereof by your petitioner filed with said proposal or deed in the office of the postmaster general or of the Post Office Department of the said United States.

Your petitioner further alleges that he has elected to require and hereby respectfully demands of the United States of America payment to him of the said consideration for said sale, to wit: licensing, assigning and investing in the United States being the said sum of Twenty Million Dollars mentioned in the said proposal or deed so executed and delivered to the United States by your petitioner at its request as aforesaid.

And your petitioner claims that by reason of the execution by your petitioner to the United States in accordance with the said advertisement or request of the United States of said proposal in writing under the seal of your petitioner and that by reason of the retention thereof by the United States and failure of the said United States to either reconvey to your petitioner the interest in said Letters Patent covered by and included in said proposal in writing and retention by the United States as its own property as aforesaid, the said United States assented to said proposal and thereupon the contract of sale of said Letters Patent to the United States became, was and is complete, and the said United States became, was and is by reason aforesaid indebted to and bound both in law and equity to
6 pay to your petitioner the said consideration, being, to wit: the said sum of Twenty Million Dollars.

Your petitioner further alleges and claims that he has caused a certain inquiry or investigation to be made concerning the use by the Government of said invention since the receipt by the Government of said proposal in writing, and as a result of said inquiry and otherwise your petitioner believes and he therefore alleges upon information and belief that the Government of the United States since the receipt by the said postmaster general of your petitioner's said proposal in writing so executed to the United States as aforesaid under the seal of your petitioner and has since (as your petitioner is informed and believes), to wit: the first day of March, 1893, been and is now daily either directly or indirectly making use of said invention or device in the transmission of its mails, being substantially the invention or device mentioned and described in said Letters Patent or described in the particular description thereof filed at the time and as aforesaid with said proposal in writing in the office of the postmaster general as aforesaid. By reason of which said use as aforesaid of said invention or device by and as aforesaid your petitioner

claims that the United States has assented to the terms of said proposal and then and there became, was and is liable to pay to your petitioner the consideration mentioned in said proposal, being, to wit: said sum of Twenty Million Dollars.

Your petitioner further alleges that the Government of the said United States since the receipt by the said postmaster general of said proposal or bid by the petitioner so executed in writing and delivered to the United States as aforesaid under the hand and seal of
7 your petitioner in compliance with and in response to said advertisement, and while and during the time that it (the said United States) was in the custody and possession of said proposal or bid it (the said United States) did on, to wit: the first day of March, A. D. 1893, with the consent of petitioner (the vendor) at and within the said United States enter into the use and enjoyment of the device, letters patent and invention so secured to the petitioner by letters patent and by him in and by said bid so offered for sale to the said United States as aforesaid whereby and by means whereof (aforesaid) the said United States on, to wit: the day last aforesaid, assented to the said proposal or bid and the terms and conditions thereof and then and there and thereby promised and agreed to pay for a good and valuable consideration by it received and moving from the claimant and became and was (and now is) justly and legally indebted to and liable to and obligated and bound to pay to the petitioner (the claimant) on, to wit: the first day of September, A. D. 1893, the consideration mentioned in said proposal or bid, being said sum of Twenty Million Dollars.

Your petitioner further alleges that the said Government of the United States after the receipt by it of said proposal or bid did not reject said proposal or bid, but that it (said government) did on the contrary retain said proposal or bid, and did, while in the lawful custody and possession thereof, make by law appropriation of money in express terms "for pneumatic tube service or other similar device by purchase or otherwise" (being the service and pneumatic tube and device described, mentioned and included in said advertisement, letters patent and proposal or bid) and did on, to wit: the first
8 day of March, A. D. 1893 (at and within the United States of America and with the consent of the petitioner, the vendor) enter into the use and enjoyment of said device, invention and letters patent so to it offered for sale as aforesaid, by the petitioner in and by said proposal or bid as aforesaid, whereby and by means whereof (aforesaid) the said Government of the United States on, to wit: the day last aforesaid, assented to said proposal or bid, and became (and then and thereby for a valuable consideration by it received and moving from this petitioner) and was on, to wit: said first day of March, A. D. 1893 (and is now), justly and legally indebted to, liable to and obligated and bound to pay to the petitioner on, to wit: the first day of September, A. D. 1893, the consideration (purchase money) mentioned in said proposal or bid, being said principal sum of Twenty Million Dollars.

Your petitioner further alleges that a valid and subsistent express contract was duly entered into at and within the State of Illi-

nois by and between the claimant and the said United States (being the contract hereinbefore stated and alleged) and that the parties thereto and herein did at the time of the execution thereof adopt as and include in and as a part and parcel of said contract Section 2 of chapter 74 of the Revised Statutes of the State of Illinois, then in full force and effect as a public law of said state, and that the said United States has delayed payment to the claimant of said purchase money, and that said delay has been and is unreasonable and vexatious, whereby and by means whereof the said United States was and is further legally obligated and bound to pay to the claimant the further and additional sum of five per centum per annum of and upon said sum of twenty million dollars from the first day of September, A. D. 1893, to the date of entering judgment herein.

9 Your petitioner further alleges that he has applied to the now postmaster general for payment of, to wit: the consideration mentioned in said proposal in writing under seal, but that no part of said consideration has been paid to your petitioner, and that all final action concerning said matter by said Post Office Department and postmaster general, so far as your petitioner is advised, is embraced in the original communications from said Department which were by your petitioner received and copies of which said communications are hereto annexed, marked respectively Exhibit A., Exhibit B., Exhibit C.

Your petitioner further alleges that he is the owner of said claim, that no assignment or transfer of said claim or of any part thereof or interest therein has been made; that the claimant believes that he is justly entitled to the amount therein claimed from the United States, to wit: Twenty Million Dollars, after allowing all just credits and off sets, that the claimant has at all times borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said government; and that he believes the facts as stated in said petition to be true.

Wherefore your petitioner prays that the court will enter judgment herein in favor of your petitioner and against the said United States in the amount of and for to wit: said sum of Twenty Million Dollars and that the court will also enter judgment herein in favor of your petitioner and against the said United States in the further and additional sum of five per cent. per annum of and upon said sum of Twenty Million Dollars from the first day of

10 September, A. D. 1893, to the date of entering judgment herein, and that the court will grant unto your petitioner such other and further or other and different relief in the premises as justice may require.

And your petitioner will ever pray, etc.

JAMES W. BEACH,
Claimant (Petitioner.)

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

In the Court of Claims.

STATE OF ILLINOIS,
Cook County, ss:

James W. Beach, being first duly sworn, on oath states that he is the claimant mentioned in the foregoing petition, and that he has read said petition and that the same is true except as to matters therein stated upon information and belief and that as to those matters he believes them to be true.

JAMES W. BEACH.

Subscribed and sworn to before me this 23rd day of February, A. D. 1899.

[NOTARIAL SEAL.] RICHARD B. TWISS,
Notary Public.

JAMES W. BEACH,
Claimant (Petitioner).

11 UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

In the Court of Claims.

STATE OF ILLINOIS.
Cook County, ss:

James W. Beach, being first duly sworn, on oath states that he is the claimant mentioned in the foregoing petition, and that he has read said petition as amended, and that the same is true except as to matters therein stated upon information and belief, and as to those matters he believes them to be true.

JAMES W. BEACH.

Subscribed and sworn to before me this first day of February, A. D. 1904.

[NOTARIAL SEAL.] ALLEN BOYER,
Notary Public, Cook County, Illinois.

EXHIBIT A, REFERRED TO.

Pneumatic Tube Service.

Postoffice Department,
Second Assistant Postmaster General,
Railway Adjustment Division.

WASHINGTON, *September* 19, 1898.

SIR: I have to acknowledge the receipt of your letter of the 13th inst., addressed to the Hon. Postmaster General and by him referred

to this office for answer, and in reply to inform you that the Department does not understand that your device is being used
12 for mail purposes. Neither does it understand that your claim is one that can be recognized by the Department.

Very respectfully,

W. S. SHALLENBERGER,
Second Assistant P. M. General.

Mr. James W. Beach, No. 115 Dearborn Street, Chicago, Illinois.

EXHIBIT B, REFERRED TO.

Office of the Postmaster General.

WASHINGTON, D. C., *October* 7, 1898.

Jas. W. Beach, Esq., 115 Dearborn Street, Chicago, Illinois.

SIR: Referring to your communication of the 1st instant, in which you seem to allege an indebtedness on the part of this Department for the use of your patented device in connection with pnumatic tubes, I desire to state that the whole question (which simply involves the legal aspect of the case) was submitted to the Assistant Attorney General for this Department, a copy of whose answer thereto is enclosed herein.

It is needless to state that no further action can be taken by this Department in the matter.

Very respectfully,

PERRY S. HEATH,
Acting Postmaster General.

(1 enclosure.)

13 EXHIBIT C, REFERRED TO.

Office of Assistant Attorney General for the Postoffice Department.

WASHINGTON, *October* 5, 1898.

The Honorable the Postmaster General.

SIR: Referring to the letter of Jas. W. Beach, Esq., of 115 Dearborn Street, Chicago, Ills., bearing date of October 1st instant and sent by you to this office for investigation and reply, I have the honor to make the following statement:

Mr. Beach claims that he is the patentee of certain devices (he does not name them) involved in the pneumatic tube mail service (he does not state where); furthermore, that he has a "contract" with the Post office Department for the use of his invention or device. Had he submitted a copy of the alleged contract, or made some reference to it specifically, by date or otherwise, so that the files of this Department could be searched for it, I would be better prepared to answer as to whether or not such a contract, or anything simulating a contract, had heretofore been entered into.

I have, however, caused a search to be made for such contract or for any correspondence relating to, or in the nature of, a contract, and have failed to find it; hence I assume that Mr. Beach is mistaken in the supposition that he has now, or ever has had, any contract with this Department relating to the use of his
14 patent or patents in the pneumatic tube mail service or any part thereof. Even if such a contract had been entered into by the Postmaster General it is doubtful if it would be valid, inasmuch as the Postmaster General has no specific authority of law to enter into contract for the use or purchase of patents. Ordinarily, as you know, where anything in the form of supplies or devices is used by the department, a lease for the use of the same is obtained by the person contracting with the department. Everything, indeed, of material consequence which enters into the Postal Service is obtained through contracts as the result of advertisement, and in any case where the contract involves the use of any device which is protected by patent, it is the business of the contractor with the Department, and not of the Department itself, to arrange for such use.

To admit the claim of Mr. Beach that he has a contract with this Department of the kind referred to is to admit that it is such a contract as might be made the basis of a suit for damages for breach of the provisions thereof. Such an admission would be unwarranted, for it is a settled fact that the United States is not liable in damages to a patentee for the infringement of his patent, or for using the same without license, or otherwise. This doctrine was laid down in the cases of Schillinger v. United States, 155 U. S., 163; United States v. Bordan, 156 U. S., 552; and Belknap v. Schild, 161 U. S., 10. In each of these cases the decision is based upon the principles that the United States cannot be sued except by its own consent (United States v. McLemore, 4 How., 286; Hill v. United States, 9 How., 386; Case v. Terrell, 11 Wall., 199); that the United States has nowhere consented by statute to be held liable in a suit founded in tort for wrongs done by its officers though in the dis-
15 charge of their official duties (Gibbons v. United States, 8 Wall., 269; Morgan v. United States, 14 Wall., 531; Langford v. United States, 101 U. S., 341; United States v. Jones, 131 U. S., 1, 16, 18; Hill v. United States, 149 U. S., 593); and that a suit for recovery for the infringement of a patent is an action sounding in tort, and the United States cannot therefore be sued in such cases. Schillinger v. United States and other cases above cited.

Thus, the conclusion is logical that if a suit will not lie against the United States for the infringement of a patent, no officer of the United States may enter into a contract for the use of such a patent so as to bind the United States in an action at law.

Some of the decisions go to the extent of holding that in certain cases actions may be brought against the officers and agents of the United States, civil and military, holding them personally liable, in time of peace, as in the case of a private person who has wrongfully invaded the rights of another in connection with letters patent; and that such officers or agents, although acting under orders of the United States, may be personally liable to suit for infringement of

a patent. (See Cammeyer v. Newton, 94 U. S., 225; Belknap v. Schild, 161 U. S., 18.)

But the recognition of the right of a patentee to bring suit against an officer or agent of the Government for alleged infringement of patent would not seem to apply, in any respect, to the case which Mr. Beach seems disposed to present, for the reason that the Post Office Department is not the owner of any pneumatic tube, in whole or in part, anywhere in use in connection with the transmission of mails. The Department is under contract with certain pneu-
16 matic tube companies, in the Cities of Philadelphia, New York, Brooklyn and Boston for the transmission of mails through the tubes that are furnished and owned by the contractors. If in the construction of these tubes the patent of Mr. Beach has been infringed his remedy is against the company that uses it and not against the Post Office Department. The Department contracts with a railroad company for the conveyance of mails upon its cars. Certainly that does not render the Department liable for an infringement of the patent upon which the trucks or the couplings or any other portion of that car is constructed. The same may be said of any patent that enters into the construction of a wagon or stage upon which the mails are conveyed. To admit that a liability attaches to the United States for the transmission of mails in patented vehicles would be to subject it to damage, if a suit would lie, in numerous instances; and to claim that the United States is liable to such suits is ridiculous.

I have fully answered the complaint of Mr. Beach as I understand it, and I, therefore, suggest that the acknowledgement by you of the receipt of his communication, above referred to is all that you need to do.

Very respectfully,

(Signed) JAS. N. TYNER,
Assistant Attorney General for the Post Office Department.

17 II. *Traverse. Filed December* 14, 1905.

In the Court of Claims of the United States, December Term, A. D. 1905–6.

No. 21255.

JAMES W. BEACH
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

18 III. *Argument and Submission of Case.*

On the 14th day of December 1905 the case came on to be heard. The cause was argued by the claimant, James W. Beach, on his own behalf, and by Mr. Felix Brannigan, for the defendants, and submitted.

19 IV. *Findings of Fact (as Amended) and Conclusion of Law, and Opinion of the Court.*

Filed as of January 29, 1906.

This case having been heard by the Court of Claims, the court upon the evidence, makes the following

Findings of Fact.

I.

The claimant, James W. Beach, was and is a citizen of the State of Illinois and of the United States, residing in the city of Chicago, in the State of Illinois, and has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government; and is the owner of the claim sued upon, and no assignment or transfer of said claim or any part thereof or interest therein has been made.

II.

Prior to July 26, 1892, the claimant herein, James W. Beach, had been granted letters patent by the United States for an invention relating to pneumatic transportation, and known as Letters Patent No. 267,318, and dated November 14, 1882. The object of said letters patent was set forth to be an improvement by said Beach on inventions theretofore granted relating to pneumatic transportation, which was to provide a continuous current of air passing through a tube, pipe, or box at great velocity, into which current of moving air the article or matter to be transported or conveyed was set forth to be in limited quantities, continuously projected or impelled, and also to transmit such article or matter through the tube while in a state of suspension in the air in the tube, and without contact with the sides or bottom of the tube. These objects were illustrated by mechanism disclosed by accompanying drawings.

III.

Prior to July 26, 1892, the claimant herein, James W. Beach, had been granted letters patent by the United States for an improvement relating to pneumatic transportation, and known as Letters
20 Patent No. 444,038, and dated January 6, 1891. The objects of said letters patent were set forth to be, first, to create a

current of air, gas, or other fluid in a pneumatic pipe or other conduit by providing and maintaining, substantially, a continuous current or a large volume of air, gas, or other fluid under pressure at any desired point or points along and between the ends of a pneumatic line, pipe, or conduit, and providing means or mechanism for directing the course of the current created by the escape of said volume from pressure, which said volume or current of air, gas, or other fluid thus directed shall at such point or points be allowed to escape into or be forced into or shall enter said line or pipe under pressure, as aforesaid, and be impelled forward in said line or pipe at great velocity and through the use of his invention or device in the direction desired; second, to increase the velocity of a current of air, gas, or other fluid moving in a pneumatic pipe by forcing, impelling, or allowing to escape from under pressure (at any desired point or points along or between the extreme ends of a pneumatic pipe) into said current at great velocity in the same direction in which said current is moving, and not in an opposite direction, a further, additional, or other volume of air, gas, or other elastic fluid, thus allowing the matter or commodity in course of transportation in said pneumatic pipe to be transported throughout the entire length of said pneumatic pipe, if desired, without stop or delay; third, to create and maintain a current of air, gas, or other elastic fluid throughout the entire length of a pneumatic pipe or conduit (having both ends thereof open and unobstructed) by allowing to escape from under pressure (or by forcing or impelling at great velocity) into said pipe at any desired point or points between the ends of said pneumatic pipe in the direction desired a volume or continuous current of air, gas, or other elastic fluid, and to transport the mails, grain, flour, and all suitable commodities through said pipe by means of said current of air, gas, or other fluid so to be created as aforesaid; fourth, to create a current of air, gas, or other elastic fluid, or to increase the velocity of a current of air, gas, or other elastic fluid within or moving in a pneumatic pipe by impelling or forcing into said pipe (in the direction desired) at a point between the ends of said pipe a current or large volume of air, gas, or other fluid, and by withdrawing or exhausting the said current or part thereof from said pneumatic pipe at a point forward or in advance of said last-mentioned point, and, fifth, to provide means for operating the machine so as to accelerate the velocity in or create said current in said pneumatic pipe in either direction as desired.

IV.

Ten prior letters patent were issued by the United States Patent Office for original and new and useful improvements in pneumatic conveyors or devices for the transmission of letters, messages, and small packages through small pipes, as follows:

Needham patent of September 6, 1864.

Wood patent of May 28, 1867.

A. E. Beach patent of October 26, 1869 (not the same person as the plaintiff).

Siemens patent of July 26, 1873.
21 Dowd patent of May 18, 1875.
Leaycraft patent of June 13, 1876.
Randolph patent of September 12, 1876.
Ely patent of December 13, 1879.
Hatch patent of December 23, 1879.
Horen patent of April 11, 1882.

V.

Pursuant to the authority of section 6 of the Post-Office appropriation act of July 13, 1892 (27 Stat., 145), the Postmaster-General had published the following advertisements in several newspapers:

Mail Service by Pneumatic Tubes or Other Systems.

POST-OFFICE DEPARTMENT,
WASHINGTON, D. C., *July* 26, 1892.

Authority is given the Postmaster-General by the provisions of the act making appropriations for the service of the Post-Office Department, approved July 13, 1892, "to examine into the subject of a more rapid dispatch of mail matter between large cities and post-office stations and transportation terminals located in large cities by means of pneumatic tubes or other systems," with the view of ascertaining the cost and advantages of the same.

Acting upon this authority, I hereby give notice to all persons who are the inventors, assignees, or otherwise owners of any pneumatic tube or other device suitable for and adapted to said service to present in writing, under seal, on or before Thursday, the 8th day of September, 1892, addressed to the "Postmaster-General, Washington, D. C.," and marked "Rapid Dispatch of Mails," a full description of such tube or device, together with a statement of the evidence of title to or ownership of the same, which evidence may subsequently at any time be required by the Postmaster-General. Said description must state the kind and quality of motive power used in operating the same; the method of its application; the capacity of the tube or device, and offer to submit a test; the precise place and terminals where it is proposed to conduct the test; the date at which the tube or device will be in condition to be tested, and the time that will necessarily be occupied in making the test; and, generally, anything else whereby the Postmaster-General can judge of the relative value of the several tubes or devices that may be submitted and the adaptability of each to said service.

It is preferred that the tests aforesaid be conducted in the city of New York, Brooklyn, Philadelphia, Chicago, or Washington, D. C., and between adjacent cities, or between a post-office and substation or transportation terminal.

It is also requested that each of said descriptions be accompanied by a proposal offering to license to, or otherwise invest in, the United States the right to use the tube or device, to lease by the year, or to sell, assign, and transfer it to the United States as a purchaser.

The tests aforesaid must be made without cost to the United States, and upon the express condition that the person offering said tube or device waives all claim against the United States for any expense attending the construction, tests, or preparation for said tests, or any other expense attending the same. The Postmaster-General has no authority in law to contract for the expenditure of money for the use of or purchase of any such invention, nor is there any existing appropriation out of which the cost of the same could be paid.

The right is reserved to decline any test of any tube or device submitted in response to this advertisement, and to reject any proposal that may be made.

The propositions and result of all experiments will be the subject of a report to Congress.

JOHN WANAMAER,
Postmaster-General.

The following letter was written by plaintiff to the Postmaster-General presumably in answer to said advertisement:

[James W. Beach, attorney at law, 94 Washington Street, Room 37.]

CHICAGO, *Aug.* 20, 1892.

Hon. John Wanamaker, Postmaster-General, Washington, D. C.

DEAR SIR: I, the undersigned, desire to submit to the Postmaster-General a description of a pneumatic tube or device (of which I am the inventor and owner) suitable for and adapted to the rapid dispatch of mail matter between large cities and post-office stations, and transportation terminals located in large cities; and I also desire to accompany said description with a "proposal offering to license to or otherwise invest in the United States the right to use the tube or device, to lease by the year or to sell, assign, and transfer it to the United States," as a purchaser, pursuant to your advertisement dated July 26th, 1892, entitled "Mail service by pneumatic tubes or other systems."

I am unable to determine from said advertisement whether the Postmaster-General requires under said advertisement that said proposal shall fix or name a price at which the owner will so license, lease, or sell, assign, and transfer to the United States the right to use the tube or device. In accordance with the suggestion of Mr. Michener (whose letter I enclose herewith), I respectfully request that the Postmaster-General will kindly inform me at any early day what interpretation I shall put upon said advertisement with reference to the point now being considered; that is to say, whether my said proposal should or should not name a price at which I, as the owner aforesaid, will so license, lease, or sell, assign and transfer to the United States the right to use said tube or device.

I remain, very respectfully, yours,

JAMES W. BEACH.

23 PRIVATE OFFICE JOHN WANAMAKER,
CITY HALL SQUARE,
PHILADELPHIA, *Aug.* 23*d*, 1892.

James W. Beach, Esq., Chicago, Ill.

DEAR SIR: In reply to your letter of the 20th, I beg to say that the advertisement for pneumatic tubes states each offer shall be accompanied by proposals to license to, or otherwise invest in, the United States the right to use the tube or device, to lease by the year, or to sell, assign, or transfer to the United States. Such proposals must, of course, fix some price to be of any value.

Yours, truly,

JNO. WANAMAKER,
Postmaster-General.

The claimant answered said advertisement by letter, under seal, of August 30, 1892, as follows:

Proposal of Beach.

[Law Office of James W. Beach, 94 Washington Street, Chicago, Illinois.]

Rapid Dispatch of Mails.

Hon. John Wanamaker, Postmaster-General, Washington, D. C.

SIR: In accordance with the advertisement of the Postmaster-General, which said advertisement is dated July 26th, 1892, and is entitled "Mail service by pneumatic tubes or other systems," I, the undersigned, James W. Beach, of Chicago, Illinois, hereby propose and offer to license to or otherwise invest in the United States the right to use the said two pneumatic devices, or either of them, that is to say, the devices mentioned and described in Letters Patent No. 267,318 and in Letters Patent No. 444,038, granted by the United States to the undersigned, James W. Beach, mentioned and described in the description of said devices accompanying this proposal, and signed by said James W. Beach (said two devices being also described in Exhibits "C" and "D" annexed to the description of said devices filed herewith in the office of the Postmaster-General by the Beach Pneumatic Conveyor Company), or to lease by the year, or to sell, assign, and transfer it to the United States as a purchaser, said right being the exclusive right in and under said letters patent, and each of them, in and to all the States and Territories of the United States, save and excepting therefrom the States of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, Michigan, and the District of Columbia, heretofore sold and assigned to said Beach Pneumatic Conveyor Company by the undersigned.

And I, the undersigned James W. Beach, hereby propose and offer as aforesaid to license to or otherwise invest in the United States all of my said right in, to, under, and by virtue of said letters

patent, and each of them, in and to all the States and Territories of the United States, save and excepting said States of Maine, New Hampshire, Connecticut, Rhode Island, Massachusetts, Michigan, and the District of Columbia, for and in consideration of the payment to me, the said James W. Beach, my heirs, executors, administrators, and assigns, by the United States of the sum of eight
24 hundred thousand dollars ($800,000) on the first day of September in each year during the term of said license or leasing or investment in the United States as aforesaid.

And I, the undersigned, James W. Beach, hereby further propose and offer to sell, assign, and transfer to the United States all of my said right derived and possessed by me under and by virtue of said two letters patent, in and to all the States and Territories of the United States, save and excepting therefrom the said States of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, Michigan, and the District of Columbia, for the sum of twenty millions of dollars ($20,000,000), to be paid by the United States to me, the undersigned, James W. Beach, my heirs, executors, administrators, and assigns, on or before the first day of September, A. D. 1893, and upon payment of said sum of money last mentioned to me at the time and as aforesaid by the United States, I will sell to and make and execute to the United States a good and sufficient assignment and transfer of all of my said rights granted and by me possessed as aforesaid under and by virtue of said two letters patent in and to all the States and Territories, save and excepting therefrom the said States of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, Michigan, and the District of Columbia.

And I, the undersigned, hereby further propose and offer to so license, to lease to, or otherwise invest in the United States all of my said right under and by virtue of said two letters patent (for, and the said pneumatic devices or conveyers to be used solely and only for the purpose of collecting and transmitting the United States mails, and for no other purpose or purposes) in said entire United States, save and excepting therefrom the said States of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, Michigan, and the District of Columbia, upon the express condition that the United States shall pay therefor and in consideration thereof to me, the undersigned, James W. Beach, my heirs, executors, administrators, and assigns, on the first day of September in each year during the term of said license, or leasing, or investment in the United States the sum of three hundred and fifty-four thousand five hundred and eighty dollars and twenty cents ($354,580.20), being the amount of money expended annually by the United States for that branch of the postal service known as the "Regulation wagon, mail-messenger, mail station, and transfer service" in twenty-six cities only, not including the cities of Washington, D. C., Providence, R. I., Boston, Mass., and Detroit, Mich., as shown on page 112 of the report of the Postmaster-General, 1888.

And I, the undersigned, hereby further propose and offer as aforesaid to license or lease to the United States for mail purposes only, as

aforesaid, a right or rights, and upon reasonable and equitable terms, and for a reasonable consideration to be paid to me, the undersigned, my heirs, executors, administrators, or assigns therefor, by the United States, the amount thereof to be agreed upon by the United States and the undersigned James W. Beach (either by mutual agreement or by arbitration) a right or rights as aforesaid to construct and operate within said entire United States, or either of them (save and excepting therefrom said States of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, Michigan, and the District of Columbia), one or more of said pneumatic conveyers or devices, said consideration to be based upon the mileage of the pneumatic tubes to be used, or upon a small percentage of the total (present) annual cost of the transportation of the United States mails within said United States.

This proposal is made upon condition and the same shall not be binding upon the undersigned unless the United States shall by the Postmaster-General accept said propositions, or one of said propositions, and shall notify me, the undersigned, of said acceptance on or before the first day of August, A. D. 1893.

In witness whereof I have hereunto set my hand and seal at Chicago, Illinois, this thirtieth day of August, A. D. 1892.

JAMES W. BEACH. [SEAL.]

In presence of—

EDWARD J. QUENNY (?)
JACOB H. HOPKINS.

[*Letter of Beach Forwarding His Proposal.*]

CHICAGO, *September* 1, 1892.

Rapid Dispatch of Mails.

Hon. John Wanamaker, Postmaster-General, Washington, D. C.

SIR: In connection with the annexed proposal I beg leave to call your attention to the fact that although the sum mentioned as a consideration to be paid annually for a license, or by way of royalty, for the use of the devices mentioned for all purposes for which said devices are suitable as a means of transportation, is in the aggregate a considerable sum of money, yet said sum, large as it is, is only a fraction over three per cent of the sum annually appropriated by the Congress and expended for one class of inland transportation of the mails, as appears from inspection of the post-office appropriation bill for the current fiscal year.

The amount named as a consideration for which said devices (rights) would be sold is such sum as would annually, if placed at interest at four per cent, produce said sum or royalty.

Of course we expect at our own expense to demonstrate in a positive and convincing manner that the said pneumatic devices will, when in operation, do and perform all that is claimed in the accom-

panying "Description" of said devices. And if our said demonstration be satisfactory and convincing as aforesaid, it occurs to me (aside from any feeling of covetousness) that the amount named is not a tithe of the actual value of the inventions.

I should be greatly pleased if said pneumatic system could be in operation at Chicago at and during the World's Fair. Said system in operation would in a marked degree show the advancement of the postal service of the United States.

The undersigned is prepared to enter into a contract with the United States to construct or cause to be constructed (and operated, if so desired) one or more lines of said pneumatic devices in any city of the United States or between any cities or towns in the
26 United States (whether near or far apart), upon terms and for a consideration to be mutually agreed upon, and upon executing said contract the undersigned will secure the performance of any undertaking which he may so enter into by a good and sufficient bond.

With great respect, I remain, sincerely yours,

JAMES W. BEACH.

[*Letter from the*] *Beach Pneumatic Conveyer Company,* 94 *Washington Street, Chicago.*

Rapid Dispatch of Mails.

Honorable John Wanamaker, Postmaster-General, Washington, D. C.

SIR: The undersigned, The Beach Pneumatic Conveyer Company (a corporation created and existing under and by virtue of the laws of the State of Illinois), in compliance with the advertisement of the Postmaster-General, bearing date July 26th, 1892, a copy of which advertisement is hereunto annexed, marked "Exhibit A," respectfully represents unto the Postmaster-General that it is the owner of a pneumatic tube or device (a pneumatic system) suitable for and adapted to the service in said advertisement (Exhibit A) mentioned; that its said pneumatic tube or device, and the right to make and use the same, was by it derived by purchase and assignment to it (to the extent hereinafter mentioned) from James W. Beach, of Chicago, Illinois, of two certain letters patent issued by the United States to the said Beach as the inventor of the several devices therein and hereinafter described.

The following is a full description of said device, together with a statement of the evidence of title or ownership of the same, and offer to submit to test, etc., etc.:

The device described in said first-mentioned letters patent, being patent No. 267,318, dated November 14, 1882, is constructed in the manner following, to wit: A pneumatic pipe of the diameter required is laid or placed between any two points desired. Assuming that said pneumatic pipe is, say, eight inches in diameter and is placed in one or more of the principal streets of a city where mail

collections are large. One end of the pneumatic pipe is located in the city postoffice; at or near this end of the pneumatic pipe the air in said tube or pipe is by suitable machinery being continuously (when said device is in use) exhausted, while at the same time at the far or remote end of said pipe air is being forced into said pipe; by this means a current of air is established in said pipe; by this means a current of air is established in said pneumatic pipe moving in the direction of the post-office (or sub-station, as the case may be) at very great velocity. This pneumatic pipe may also form part of a circuit from and to the city post-office. Said pneumatic pipe at all desired points is furnished with a suitable device for mailing written letters; this device consists of a pipe of proper size and length, with the upper end projecting above the ground and the lower end thereof connecting with the interior of said pneumatic pipe, and having suitable valves through which written letters to be mailed pass in entering said pneumatic pipe. The current of air being established in the pneumatic pipe, the person desiring
27 to mail (from the street or building) letters will enclose said written letters in a suitable envelope or covering and raise said valve and insert therein his written letters (and envelope inclosing the same) and drop or let go the valve, whereupon said letters will by said current of air be almost instantaneously (and quite safely) deposited in the city post-office, where they will be received in a suitable receiver or "air lock," from which said written letters may upon their arrival, or at pleasure, be "dumped" or deposited upon the table in the post-office. For the transmission of large bundles or packages of mail matter this system contemplates the use of a suitable vehicle therefor, to be propelled in or through said tube, but not so for the collection to a common center of the mails, as from distant points upon the street (or from the houses or buildings along the pneumatic line) to the post-office, in which case a suitable envelope or covering only will be used; in this connection allow us to call your attention to Exhibit "E," hereto annexed (being a copy of a letter, the original of which is ready to be produced for your inspection), as explanatory, in part, of the reason why no vehicle (other than the atmospheric air in said tube) will be required in the collection of the mails. As you will observe from the inspection of said letters patent now being considered, said device was designed, not only to perform the work of transporting the United States mails, but also for the purpose of transferring grain in the manner and by the means therein indicated; and in considering the statement contained in said "Exhibit B" as to the working of said device, we should bear in mind the fact that a single letter or a single grain of wheat is but a light matter, and in the matter of weight but an insignificant one when exposed to a gale of wind moving with a velocity not equaled in nature. A windstorm moving at the rate of one hundred miles an hour would doubtless destroy your residence, if in the course of such storm, and a windstorm moving at less than three times the velocity last mentioned against the building in which your Department is situated would

scatter the material of which it is constructed as autumn leaves are scattered and transported by the ordinary hurricane.

The pneumatic system above described may also be used in transmitting packages and bundles of mail matter, in which event, as above indicated, a vehicle for such purpose will be used, the manner of inserting the cylinder or vehicle into the pneumatic tube is accomplished through self-closing valves, the pneumatic pipe at the point of insertion or forwarding station being so constructed as to permit the insertion of said vehicle in the pneumatic tube or pipe without interrupting the continuous flow of air passing through said tube. At the receiving station said vehicle with its load will be received and its forward progress stopped by a suitable "air cushion" embraced in the receiver there located. Any particular vehicle or cylinder (or loose letters, if desired) may, by a suitable switch described in said patent now being considered, be "cut out" or "switched out" of the main pneumatic line into a suitable receiver located at any point between the two ends of the pneumatic pipe.

Your earnest attention is invited to the claims allowed to the inventor in said first-mentioned patent, believing, as we do, that they were entirely warranted by the state of the art and by the invention of said Beach, and that we are fully protected in the use and enjoyment thereof to the extent in said patent and herein (in part) indicated, and that this company has the exclusive right, as
28 aforesaid under said patent and claims to introduce the matter to be transported in said pneumatic pipe and continuous current of air moving therein at any desired point or points between the extreme ends of said pneumatic pipe, and that this corporation has the like exclusive right under said patent to "switch" or divert the matter in transit from the pneumatic tube at any point or points between the extreme ends of said pneumatic tube.

The device described in the other of said letters patent, being Patent No. 444038, dated January 6th, 1891, issued to said James W. Beach, for improvement in pneumatic conveyers is intended for use in connection with and as part and parcel of a long line of pneumatic pipe, as between distant towns or cities. It may be briefly described as follows: That is to say, a pneumatic pipe of any length and diameter required is constructed, said pipe being at any point between the ends thereof enlarged in such manner as to have somewhat the appearance of a double cone with the large ends placed together; at the largest part or portion of this enlarged section of pipe is an aperture through which air may pass from an air compressor, or "blast engine," into the interior of said pneumatic pipe. Within said enlarged portion of said pneumatic pipe is placed a short movable pipe of the same interior diameter as the portion of said pneumatic pipe which is not enlarged. This movable pipe is a little shorter than the total length of the enlarged portion of said first-mentioned pipe, and said movable pipe is chamfered (upon the outside) at both ends thereon in such manner as to substantially form an even, smooth, air-tight joint when either end thereof is pressed forward and placed in contact by means of the screw (here-

inafter mentioned) with the interior of said enlarged or conical portion of said pneumatic pipe. This movable pipe is mounted upon a "lug" (being a thin piece of metal) in such manner that said movable pipe may be moved lengthwise by means of the screw upon which the lower end of said lug is mounted; said lug is moved backward and forward through a suitable slot in the bottom of said enlarged portion of said pneumatic pipe, which slot is covered by a suitable housing to prevent the ingress and egress of atmospheric air. One end of said screw projects through and outside of said housing, where it is provided with a wheel or lever in order to provide means for turning said screw. The manner of operating the device last described is to turn said wheel and thereby turn said screw until the thread of said screw (by means of said lug mounted thereon) has carried said movable pipe into close contact at one end thereof with the interior of said enlarged or conical portion of said pneumatic pipe. By this means an air chamber is formed between the outside of said movable pipe and the inside of said enlarged part of said pipe, having an opening or place of discharge (at one end of said movable pipe) for the atmospheric air, which is forced into said air chamber through said air compressors or "blowing engines" as aforesaid.

In operating this device, said movable pipe having been carried forward by said screw until one of the chamfered ends of said movable pipe is in close contact with the interior of said conical pipe as aforesaid, air is, by means of a blast engine, or other suitable device, forced into said air chamber, whereupon the air so forced into said air chamber escapes, through said place of discharge, and no one particle of air has time to escape, move backward, or react through said movable pipe before being impinged upon by
29 other swiftly advancing particles of air, and the result is the creation and maintenance in said pneumatic pipe of a current of air moving in the same direction throughout the entire length of said pneumatic pipe; and this is so without regard to the distance said pneumatic device or pneumatic engine is located from either end of said pipe, and thus a pneumatic pipe, having the same interior diameter throughout (substantially) its whole length (and being open at both ends if desired), may be operated by forcing air at any point along the line thereof into the side of the pneumatic pipe, and matter to be transported may be transmitted in the one direction throughout the entire length of said pneumatic pipe by the means here described, and by simply turning said screw until the other or fore end of said movable pipe has come in contact with the interior of said conical or enlarged part of said pneumatic pipe said current of air will be overcome and set moving and established in the opposite direction, and said matter may be retransmitted by means of said current of air last mentioned throughout the entire length of said pneumatic tube in the direction opposite to the direction first mentioned. This device also includes means for exhausting the air or taking the air from said tube in order to increase its velocity. Any number of these pneumatic engines here described may be placed in the same pneumatic line and may all be operated

in the same direction at the same time, or different sections of said pneumatic line or pipe may at the same time be operated in different or opposite directions, and at the same or different velocities, and a single section may at the same time be operated in opposite directions, or toward and having a common point (between the ends of said section) of discharge for the matter in transit.

We can exhaust air from said pneumatic tube at any point desired and within a distance of, say ten feet from such point. We can, by means of this device, force into said pneumatic tube another volume of air as well also as the volume of air which we exhaust as aforesaid, and thus give a new impetus to, or add to, the momentum of the current of air moving through said pneumatic pipe from which current a portion was so exhausted as aforesaid.

If desired, we may combine said two pneumatic devices in one device, and by so doing can operate a pneumatic line or tube of any required diameter for any distance required (from San Francisco to New York, if you so desire), and at any speed or velocity for the matter in transit desired, and in either direction, either for the whole length of line or any particular section or sections thereof, as between stations, at will. In combining said two devices said pneumatic engines last described will be properly connected with the pneumatic pipe first described at the points desired between the reservoir and the receiver in said first-mentioned patent described. The method of operating the combined devices is the same as hereinbefore described for each separate device. In reversing the current of air in the pneumatic pipe of said combined devices of course the reservoir in said first-mentioned patent will become the receiver, and the receiver therein described will become the reservoir therein described.

Atmospheric air is used as motive power in both devices; that is to say, is so used for driving said vehicles or carriers and for collecting letters to the post-office as aforesaid, and the current of said air is established and maintained in said pneumatic pipe in such direction as desired, either by steam power, electricty, or water power operating suitable exhaust and compression apparatus or machinery, preferably air pumps and blast engines. For low velocities and short pneumatic lines we may establish and maintain said current of atmospheric air in said pneumatic pipe, either by exhausting the air therefrom or forcing the air through said pneumatic pipe only, but for any line other than an extremely short one the air should be exhausted at one end of the pneumatic tube and a volume of air should at the same time by suitable compression apparatus or blowing engines be forced into the far or remote end of said pneumatic tube, and for long lines of pneumatic tubes said combined device must be used. Air pumps and blast engines will be found to give positive and satisfactory results in all cases. The pneumatic pipe is constructed of metal, and when established for the transmission of packages, where there is little commerce to keep it bright, it should be constructed of or lined with a noncorrosive material; for the collection of written letters

to the post-office the interior of said pneumatic pipe should be of noncorrosive material.

The quantity of motive power used in the operation of said pneumatic system bears a direct ratio to the amount of matter transmitted—the diameter and length of the pneumatic pipe, and the speed with which the same is transmitted—in other words, the service required. It is obvious that it will require a greater amount of motive power to move a given weight of mail matter in a given time the distance of 500 miles than it will to move the same matter in the same time a distance of only five miles. (As intimated, it is perfectly practicable by the pneumatic system here described to transmit mail matter a distance of five miles or five thousand miles without stop if the Government should so require.)

In the absence of data as to the particular service required as aforesaid, it is impossible to give exact figures as to the motive power which will be required. However, in order to comply with the terms of said advertisement, we will say that a steam engine capable of developing 250 horsepower will operate said system of pneumatic tubes suitable for and adapted to said postal service as aforesaid many miles in length, and a system capable of collecting to the post-office in a time more written letters than the entire combined force of employees employed in the post-offices in the city of New York and the city of Chicago can collect and deliver to the post-office in twice the time required by said pneumatic system. The capacity of said tube or system of course depends, as last suggested, upon the diameter and length of tube and the velocity of the current of air moving in the pneumatic tube and matter therein in transit, and, as was said above, said steam engine when developing 250 horsepower will for all practical purposes within a large city furnish unlimited capacity for the transmission of mail matter, either of loose letters or by placing the same in carriers or vehicles, and for any reasonable short distance within a city a steam engine capable of developing 50 horsepower will, when properly applied in operating said pneumatic system, furnish ample power to operate said system, and will also furnish ample capacity for transmitting all the mail matter which can be conveniently placed therein, with abundant and proper facilities therefor.

31 In accordance with the terms of said advertisement this company offers to submit to a test of its said pneumatic tube and device to be held in the city of Chicago, Illinois, in the thirty-first ward of said city—the precise place and terminals where it is proposed to construct said test are as follows—that is to say, commencing at the southeast corner of Halsted and 100th street in said city, said pneumatic line or tube will extend east in said 100th street to Beach avenue, thence south in said avenue to 102d street, thence east in said last-mentioned street to Clinton street, south in Clinton street to the first alley north of and running parallel with Tracy avenue, thence east in said alley to the lot on which the post-office, known as Fernwood post-office (Fernwood, Illinois), is situated, the terminals mentioned in said advertisement being the power house at the southeast corner of Halsted and 100th street aforesaid and

said post-office. Said tube or device will be in condition to be tested within six months from the first day of October, A. D. 1892. We shall use in this test a steam engine capable of developing 50 horsepower, and do not expect to use to exceed 30 horsepower in the operation of the length of line mentioned, a distance of about seven-eighths of a mile (or mile and two-thirds in the complete circuit). The diameter of said pneumatic pipe will be eight inches. The weather permitting, the time necessarily occupied in constructing said device and pneumatic tube will not exceed the period of four months, and this period might be shortened if we did not contemplate the construction of a new design of compression or blowing engine and exhaust apparatus or air pump, a design not found in the market and one which we are advised can be operated at very small expense for repairs and coal, and one which will give very efficient service when in actual use. After said device is all ready therefore, the time necessarily occupied in making said tests will be short—in the discretion of the Postmaster-General of course—and need not occupy more than one day.

This corporation is duly organized under the laws of the State of Illinois, and it purchased of said James W. Beach, said inventor, all the right, title, and interest in and to said two inventions so secured to him by said two letters patent for, to, and in the States of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, and Michigan, and the District of Columbia, and for, to, and in no other places, and upon said purchase being so made as aforesaid this company received from the said Beach a proper assignment thereof in writing, by him duly executed, which said assignment was thereafter duly recorded in the Patent Office at Washington, D. C., and is ready to be produced for your inspection. There is not now, and there has never at any time been, any encumbrance or lien upon said patents, or either of them, or any interest therein; that the evidence of title to said two letters patents all appear of record in said Patent Office, and that said records show the issuing of said letters patent to said James W. Beach and said assignment to this company of said interest, and nothing further concerning said two letters patent, or either of them, or the title thereto. And this company further represents that said James W. Beach is the owner of all interest in said two letters patent not assigned by him to this company as aforesaid, and that this company and the said Beach are both entirely solvent, and that there is no judgment remain-
32 ing unsatisfied rendered by any court against the said Beach or against this company, and that this company has no bonds or other indebtedness outstanding.

The test aforesaid will be made without cost to the United States and upon the express condition that this company waives all claim against the United States for any expense attending the construction, tests, or preparation for said tests, or any other expense attending the same.

For a more particular description of said pneumatic device, your attention is respectfully called to the copies of said two letters patent, annexed hereto and marked, respectively, "Exhibit C" and "Exhibit

D," and to the printed pamphlet marked "Exhibit G," all of said exhibits being hereby referred to and made a part hereof. Your attention is also called in this connection to the three drawings submitted herewith marked, respectively, "Exhibit E" and "Exhibit F" and "Exhibit H," the same being also hereby referred to and made a part hereof, it being understood that said drawings are not to be considered as detail drawings, but only intended to give a general view of said devices. Said drawings will, it is believed, be readily understood in view of said letters patent and of the special requirements of the postal service. We also respectfully call the attention of the Postmaster-General to the proposal accompanying this description offering to license or otherwise invest in the United States the right to use the said tube or device, to lease by the year, or to sell, assign, and transfer it to the United States as a purchaser.

Cost of Construction.

Approximately, the cost of constructing said pneumatic line with material now to be found in the market (the pneumatic tube being 8 inches in diameter) will be, per mile, $8,000, and the machinery, air pumps, and blowing engines at the ends of the line will cost about $70,000.

For long distances said reversible pneumatic engines will be required; they will cost not to exceed $1,500 for each machine or pneumatic engine; and suitable pumps and blowing engines, to be used at and in connection therewith, now to be found in the market, can be had for $12,000 each. (See said Exhibit "B.")

Special machinery can be constructed to use in place of said blowing engines and air pumps, being a design not now found in the market, which will not cost more than one-half the said air pumps and blowing engines now found in the market will cost, as above indicated.

A special design of pneumatic pipe can also be made, which will in use prove satisfactory, at a cost of an eight-inch pipe of not more than $4,500 per mile. In cities having elevated railways, and where the requirements of the mail service will permit, providing satisfactory arrangements can be made, it would be well to attach the pneumatic tube to the superstructure of such elevated railways, both for mail collections and for package business; said pneumatic tubes may be placed in the ground, in the streets, or be elevated above the surface of the streets, at pleasure.

This system contemplates the use (when necessary, as aforesaid) of vehicles or carriers in said pneumatic tubes. These carriers may be of the well-known variety and construction so familiar to
33 yourself and to the general public that no description thereof will be necessary, or said carriers may be of a design not now found in the market, but of a design which we have in course of construction and which we believe to be superior in all respects to the carriers hitherto used in pneumatic tubes.

All of which is respectfully submitted.

In witness whereof the said the Beach Pneumatic Conveyer Company has caused its corporate name to be signed and its corporate

seal to be affixed hereunto, by its president and attested by its secretary, this 30th day of August, 1892.

[CORPORATE SEAL.] BEACH P. C. CO.,
By G. W. S., *Its President.*

Attest:
C. R., *Secretary.*

The description which accompanied claimant's proposal of August 30, 1892, was identical in substance with the foregoing description of the Beach Pneumatic Conveyer Company.

EXHIBIT B, REFERRED TO.

[Gordon, Strobel, and Laureau, Limited, Engineers, Manufacturers, and Contractors. F. W. Gordon, Chairman; J. C. Gray, Chairman; V. O. Strobel, Sec'y and Treasurer.]

PHILADELPHIA, *February* 2, 1891.

Mr. James W. Beach, Ebbitt House, Washington, D. C.

DEAR SIR: Since our conversation of yesterday I have weighed your general proposition to transmit mail matter by currents of air, and it seems to me quite feasible.

As it is well known, in straight or practically straight conduits the rapid flow is in the centre, diminishing gradually, perhaps approximately as the square of the distance, until at the periphery there is no current at all, no matter how rapid it may be at the centre. This is clearly seen in looking into an ordinary return tubular boiler; the flame will be seen to point directly to the centre of the tube. Mail matter, then, dropped in the centre of the tube would follow this line in the centre and not touch the sides at all, the current in the centre being sufficiently rapid.

The volume of air and pressure required for this conduit would depend very largely on the size of the conduit and the character of the mail matter to be distributed.

To enable you to estimate on the possible cost of machinery for this purpose, we would state that an engine capable of delivering 9,000 feet of air per minute at atmospheric pressure, compressed to 10 pounds above the atmosphere, we could sell on cars here for $6,000.00.

This engine is duplex, and would be, I think, admirable for the purpose, giving a very steady flow of air.

A single engine capable of blowing 15,000 cubic feet of air would cost on cars here $9,500.00.

We should think two of the former engines would be just the thing. These engines are handsomely built, economical in steam, and very strong.

Yours, very truly,

GORDON, STROBEL & LAUREAU, LTD.
F. W. GORDON, *Chairman.*

34 *Beach to the Postmaster-General.*

Rapid Dispatch of Mail.

CHICAGO, *Sept. 1st*, '92.

Hon. John Wanamaker, Postmaster-General, Washington, D. C.

DEAR SIR: Upon my own account and by direction of the Beach Pneumatic Conveyer Company, I this day forward to you, by registered letter, a package containing my proposal as an individual and the proposal of said the Beach Pneumatic Conveyer Company, made in accordance with the advertisement of the Postmaster-General, which said advertisement is dated July 26th, 1892, and is entitled "Mail service by pneumatic tubes or other systems," together with two descriptions of said devices in said proposals mentioned and three drawings in said descriptions referred to. Said two proposals are in separate envelopes, with the proper accompanying descriptions mentioned, and are sealed and addressed to the Postmaster-General, as required by said advertisement.

Please file and consider said proposals in accordance with the terms of said advertisement.

With great respect, I remain, sincerely, yours,

JAMES W. BEACH.

OFFICE OF THE POSTMASTER-GENERAL,
WASHINGTON, D. C., *Sept. 9th*, 1892.

SIR: You are invited to be present, in person or by representative, on Wednesday, September 14th, 1892, at 12 o'clock noon, in the Office of the Postmaster-General, at the public reading of the propositions under advertisement of July 26th, 1892, in regard to pneumatic service.

Very respectfully,

JOHN WANAMAKER,
Postmaster-General.

Mr. James W. Beach, 94 Washington Street, Room 37, Chicago, Ill.

[*Telegram.*]

CHICAGO, *Sept. 12th*, 1892.

Hon. John Wanamaker, Postmaster-General, Washington, D. C.:

Replying to your favor of the 9th inst., Hon. L. T. Michener will represent me at reading of propositions. Please communicate with him.

JAMES W. BEACH.

35 [*James W. Beach, Attorney at Law, 94 Washington Street, Room 37.*]

CHICAGO, *Oct. 8th*, 1892.

Rapid Dispatch of Mails.

Hon. John Wanamaker, Postmaster-General, Washington, D. C.

DEAR SIR: In the matter of the proposals submitted by the Beach Pneumatic Conveyer Company and by the undersigned, concerning the "rapid dispatch of mails," I desire to call your attention to the fact that our proposals to license by the year the use of our devices solely and only for the collection and transmission or dispatch of the United States mails throughout the entire United States is for a sum of money exceeding fifty thousand dollars less than was paid last year for that branch of the mail service known as the "Regulation wagon service" in a few cities only, being the limited number of cities where such service is established, all of which will appear from inspection of your last annual report, and said proposals so submitted as aforesaid. And in view of the fact that the "press" reports state that the Postmaster-General has arranged for some sort of a pneumatic transmission of the mails, in connection with the post-office at Philadelphia, I desire and deem it my duty to suggest that my patents for "improvement in pneumatic conveyer" (copies of which have been filed in your office, together with the description furnished you by said company) cover a "switching" system and that a pneumatic switch is covered by the claims allowed me.

And I desire to further suggest that any projection or indentation upon the interior of a pneumatic pipe, such as is necessarily embraced in other possibly "switching" devices, will cause a current of air moving in said pneumatic pipe at said places of projection or indentation to "move in some given direction or trend," or, in other words, will cause a local "ripple" or air current; if so, later patents for alleged "switching" or branch devices can not stand as against my prior invention covered by said patents.

I assume that the Government desires to secure the best device and patents, the use of which will not end in loss or disaster to the Government, and in this connection I may be allowed to say in general terms that any unauthorized indentation or projection upon the interior of a pneumatic pipe would, as we are advised, be an infringement upon the first of said patents granted to me, as would also any other branch or "switching" system, so constructed as aforesaid.

And, further, that the introduction into the pneumatic pipe of the matter to be transported at any point between the extreme ends of said pipe is covered by my said patent, as is also the introduction of the matter to be transported into said pneumatic pipe into a continuous current of air moving therein.

And I again respectfully call your attention to the claims allowed me in said patents.

In writing this I am to be understood as insisting upon the merits

and priority of our inventions and patents, the first of which said patents was granted many months before any other patent was granted for a purpose in any degree similar (to which my attention has recently been called), and will, of course, so be regarded and treated by us.

I remain, with great respect, yours, very truly,

JAMES W. BEACH.

36 VI.

The evidence does not establish to the satisfaction of the court that plaintiff's letters patent were conveyed or delivered to the Postmaster-General.

VII.

Seven other persons or companies answered the advertisement of the Postmaster-General for bids.

September 15, 1892, the Postmaster-General appointed a commission of three expert postal officials, as required by the first abovementioned said appropriation act, to examine into the merits of the pneumatic tubes and other systems so advertised for; and that commission reported to the Postmaster-General on September 29, 1892, as follows:

POST-OFFICE DEPARTMENT,
WASHINGTON, D. C., *29th Sept.*, 1892.

SIR: The committee named in your order of th. 15th of September, 1892, for the purpose of examining into the merits of the pneumatic tubes and other systems, as set forth in the Postmaster-General's advertisement dated July 26, 1892, beg to submit the following:

Eight separate propositions were regularly presented within the time mentioned in the advertisement, and it has been thought worth while to submit in brief a schedule of the same, stating the general conditions or terms upon which the owners will place their respective devices at the disposal of the Government, or submit the same to its experimental tests.

No. 1.—H. A. Lewis, Norristown, Penna. Electric device. Will submit tests at his home in two months of small device which he proposes to sell or lease.

No. 2.—J. B. Atwater, Chicago. Electric. Asks an examination of a full-sized carriage for mail service now on exhibition in Chicago. Can not put in operation a device on scale answering Department's requirements for lack of means.

No. 3.—Pneumatic Transit Company of New Jersey. Pneumatic. Will put down line between main post-office in Philadelphia and substation at Third and Chestnut streets, without cost to Government and without obligation to purchase or lease. After one year's trial will lease or will sell at cost if desired by Government.

No. 4.—Kelly Pneumatic Tube Company. Pneumatic. System now in operation in Chicago and St. Louis. Offers to build a line if Government will agree to purchase or lease when its success is demonstrated.

No. 5.—Collins Automatic Pneumatic Switching Tubes Company,

New York. Pneumatic. Will submit to test the experimental line in New York between 137th street and Locust avenue.

No. 6.—United States Automatic Dispatch Company, New York. Electric. Makes no proposition to submit a test line, but will rent for five years for first-class mail matter, anywhere except New York and Brooklyn.

No. 7.—Leake Pneumatic Transportation Company, Philadelphia. Has an experimental line at Burlington, New Jersey. Asks
37 that it be examined, and if satisfactory, will put in a plant wherever Department wishes, provided the Government agrees, if it works satisfactorily, to contract with the Leake Company in such manner as it now contracts with carrying companies or individuals and at the same price as they now pay for mail transportation; or it will authorize the Government, on certain terms, to construct its own lines.

No. 8.—James W. Beach and the Beach Pneumatic Conveyer Company, Chicago. Will make contract to construct experimental line for a consideration to be mutually agreed upon. Will sell or lease. Experimental line to be in readiness in from four to twelve months from October 1, 1892.

Your order appointing the committee directs that report be made before the close of September, 1892. We understand that your object in naming an early day was to obtain, if possible, a practical test of some of the systems before the setting in of the winter season, as in all of the principal cities the breaking of the street pavement is prohibited by city ordinances after December 1st, or after heavy frost.

The committee respectively present that it would not be possible, within the time stated, except by neglecting other daily duties, to make proper examination of all the systems proposed in the eight answers to the advertisement; but inasmuch as one proposition has been made which is more favorable to the Department than any other, for the reason that no other of the proposals offers in definite terms (and without obligation on the Government's part to purchase or rent) to give a specific service of a practical character within the near future, the committee deem it proper to make this particular proposition the subject of a preliminary report, to wit:

The offer known as "No. 3," submitted by the Pneumatic Transit Company of New Jersey, is to put down in the streets of Philadelphia, between the post-office and the East Chestnut street branch post-office, pneumatic tubes to connect these two offices, without expense to the Department, and without charge for one year's use of the same, and without liability thereafter. This offer is the best that has been received, and it is believed to be highly advantageous to the Department, because it will enable it to make an immediate and practical test of the pneumatic system. Your committee, therefore, desire to make the copy of the proposition No. 3, hereto attached, a part of this report, and they recommend prompt acceptance of the offer, that the test may be made without delay.

It is worth while to add that in our judgment the placing of a line unconditionally at the disposal of the Department for practical, every-day use will go far towards demonstrating, in a general way, the

extent to which it may be made possible to substitute a tube system for the existing manner of performing transfer service within large cities, where time enters so largely into the necessities of the people.

The committee desire, as well, to emphasize that in making recommendation that an arrangement be made with the Pneumatic Transit Company of New Jersey for the construction of an experimental line in Philadelphia, it does not wish to be understood as passing upon the merits of the system itself, that being a matter for consideration hereafter; in like manner as it will be our purpose to give consideration to each one of the systems that have been submitted.

38 The circumstances are such in the case of the Pneumatic Transit Company of New Jersey that immediate action is imperative; otherwise the opportunity for making the kind of test especially desired will have passed beyond the Department's control—at least for six months to come.

It is also worth while to say that the committee is desirous of effecting an arrangement, similar to that herein recommended with the Pneumatic Transit Company of New Jersey, with some one of the systems mentioned in the schedule, whereby simultaneously with the inauguration of the practical test at Philadelphia, it will be possible to establish in this city an experimental line between the Post-Office Department and the city post-office.

Should our recommendation have your sanction it will become necessary, so far as it relates to the Government building in Philadelphia, and the necessary motive power, to secure the authority and cooperation of the Secretary of the Treasury.

J. LOWRIE BELL,
A. D. HAZEN,
JAMES MAYNARD,
Committee.

The Postmaster-General.

Pursuant to the report of the said expert postal officials, the Postmaster-General, on October 20, 1892, entered into the following contract with the Pneumatic Transit Company of New Jersey:

"This article of agreement, made the 20th day of October, A. D. 1892, between the Pneumatic Transit Company of New Jersey and the United States of America (acting in this behalf by John Wanamaker, the Postmaster-General),

Witnesseth, that whereas the said Pneumatic Transit Company of New Jersey made a proposition in writing, in response to the advertisement of the Postmaster-General bearing date of July 26, 1892, in reference to the furnishing and laying of pneumatic tubes for the despatch of mail matter (which said proposition is referred to herein and made a part of this agreement), to lay pneumatic tubes in the city of Philadelphia, Pennsylvania, connecting the main post-office at Ninth and Chestnut streets with the subpost-office on Chestnut street below Fourth street in said city, which said proposition was approved by the Postmaster-General:

Now, therefore, the said Pneumatic Transit Company of New Jersey, in consideration of the premises and the further consideration

that it will be permitted to enter said post-office building and the building in which said subpost-office is located upon the conditions hereinafter stated, does undertake, covenant, and agree with the United States as follows, to wit:

First. That it will lay at its own expense a line of pneumatic tubes, composed of two parallel iron tubes each with an inside diameter of about six and one-eighth (6⅛) inches, in Chestnut street in said city of Philadelphia, connecting the main post-office at Ninth and Chestnut streets with the subpost-office on Chestnut street below Fourth street.

39 Second. It agrees to pay all expenses connected with the construction of the said tubes and the laying of the same along said street and into said post-office building and said subpost-office building, and also the entire cost of maintaining and operating the same during the period hereinafter mentioned, and to remove the same entirely from the said post-office building and the said subpost-office building when required to do so by the Postmaster General.

Third. It agrees that all damages whatsoever done to said buildings, or any other property owned or leased by and under the control of the United States, shall be paid in full by it.

Fourth. It agrees to submit drawings and specifications for the work, so far as the same relates to entering the said main post-office building, to the Secretary of the Treasury for his approval on or before the 25 day of October A. D. 1892; and, furthermore, that no part of the approaches to said post-office building, or the masonry, or any other part of the same, shall be disturbed until the consent and approval of the said Secretary shall have been obtained.

Fifth. It agrees to submit drawings and specifications for the work, so far as an entrance into the building in which said subpost-office is located, to the postmaster at said city of Philadelphia for his approval on or before the first day of December, A. D. 1892; and furthermore, that no part of the approaches to, or the masonry, or any other part of said building in which subpost-office is located shall be disturbed until the approval of said postmaster shall have been obtained.

Sixth. When they shall be completed, the said Pneumatic Transit Company of New Jersey agrees to turn over the said pneumatic tubes and all the appurtenances thereunto belonging to the Post-Office Department, and for the uses and purposes of the said Philadelphia post-office, for a period of one year from and after the date of the completion of the same, for such practical tests as the postmaster at said city and the Postmaster-General may see fit to conduct, which tests shall be made without cost to the United States.

Seventh. The said Pneumatic Transit Company of New Jersey hereby waives all claims against the United States for any expenses attending the construction, maintenance, repairs, or operations (except as may hereinafter be provided for) of said pneumatic tubes, or of the tests, or the preparation for the tests of the same, or for any other expenses attending the said construction, repairs, operations, or tests aforesaid.

Eighth. It is understood that this agreement is entered into on the

part of the said Pneumatic Transit Company of New Jersey with the understanding and agreement that the said United States (acting in this behalf by the Secretary of the Treasury) will consent to the use of not exceeding fifty (50) horsepower of the surplus steam in the boilers in the said post-office building at Philadelphia during the said period of said tests, or any part thereof, on condition that the cost of making any alterations or additions to the existing steam apparatus and connections in said post-office building, which may be consented to by the Secretary of the Treasury, shall be borne and paid by said Pneumatic Transit Company of New Jersey, and also that it will pay the cost of the steam supply for the said experimental tests upon the demand therefor by the Secretary of the Treasury, it being left optional with him to determine if any charge therefor shall be made.

Ninth. The said Pneumatic Transit Company of New Jersey further agrees, at the expiration of the period hereinbefore stated, to wit, a period of one year from the completion of said pneumatic tubes or at any intermediate date thereof, to lease said pneumatic tubes to the United States year by year, or to sell, assign, and transfer the same to the United States at the cost thereof, and to authorize the use by the United States of all the inventions in said pneumatic tubes and the appurtenances and devices connected therewith which are now or may then be covered by letters patent, by license, sale, or assignment as may then be agreed upon by the said Pneumatic Transit Company of New Jersey and the Postmaster-General; provided that the right to lease, rent, purchase, or in anywise contract for the use of said tubes and all appurtenances thereunto belonging from and after said date shall by law be vested in any officer of the United States.

In witness whereof the said Pneumatic Transit Company of New Jersey has, by its officers duly authorized so to do, hereunto set its hand and seal the day and year set opposite the names of each of said officers, respectively; and the said Postmaster-General has hereunto affixed his official signature and caused the same to be attested by the seal of the Post-Office Department.

(Signed) THE PNEUMATIC TRANSIT CO.

Signed this 20 day of October, 1892.

WILLIAM I. KELLEY, [SEAL.]
President.

Signed this 20 day of October, 1892.

C. T. HARROP, (?) [SEAL.]
Sec'ty.

In the presence of—
(Signed) GEO. W. REED,
(Signed) AMOS BONSALL,
Witnesses.

Signed and sealed by the Postmaster-General.

[SEAL.] (Signed) JNO. WANAMAKER,
Postmaster-General.

In the presence of—
(Signed) J. LOWRIE BELL."

Similar contracts were entered into by the Post-Office Department for like transportation of United States mail, at Philadelphia, Pa.; New York and Brooklyn, N. Y.; and at Boston, Mass.

VIII.

The Pneumatic Transit Company, which was incorporated under the laws of the State of New Jersey in 1892, had in its employ as an engineer one Birney C. Batcheller.

41 Said engineer designed some of the terminal apparatus that was first used in Philadelphia and a system of tubes and devices which carried mails pneumatically was constructed under his direction and supervision.

While in the employ of said company said Batcheller extensively investigated the subject of pneumatics, visiting foreign countries and inspecting the systems of pneumatic tubes there installed and used, and subsequently made application for and was granted Letters Patent for various improvements in pneumatic tube delivery devices.

The following is a list of patents which, according to the evidence, were granted to said Batcheller prior to the filing of the petition in this case, and which were used, applied and operated by the Pneumatic Transit Company of New Jersey:

Patent number.	Patented.	Subject.
540133.	May 28, 1895.	Carrier: Eccentric shaft.
567067.	Sept. 1, 1896.	Carrier: Hole for expansion of air in ends and spiral at end of shell for cap.
568291.	Sept. 22, 1896.	Gate for open receiver.
585498.	June 29, 1897.	6-inch receiver and sender.
585647.	July 6, 1897.	Electro-pneumatic circuit closer, drawing No. 472.
590184.	Sept. 14, 1897.	Bearing rings of layers of treated cloth, etc.
595754.	Dec. 21, 1897.	Electric time lock for substation (trans.).
595755.	Dec. 21, 1897.	First intermediate pat.
595756.	Dec. 21, 1897.	Valve for releasing lever of trans.
602422.	Apr. 19, 1898.	Chronograph.

The following is a list of patents which were granted to said Batcheller subsequent to the filing of the petition herein, and which were used, applied, and operated by the Pneumatic Transit Company of New Jersey:

Patent number.	Patented.	Subject.
623968.	May 2, 1899.	Switch mechanism.
623969.	May 2, 1899.	Signal lights.
623970.	May 2, 1899.	Present cradle trans. (air-lever release).
623971.	May 2, 1899.	Present cradle trans. (improved lever release).
623972.	May 2, 1899.	Eccentric carrier lid.
623973.	May 2, 1899.	Closed receiver, C. P. O.

632690. Sept. 12, 1899. Pneu. tube system, open receiver and regulating by-pass.
648375. May 1, 1900. Carrier lid locked by detachable key.
657076. Sept. 4, 1900. Present 8-inch carrier: Eccetric and finger.
657077. Sept. 4, 1900. Inner carrier.
657078. Sept. 4, 1900. Packing device annular joints.
657079. Sept. 4, 1900. Water-tight carrier chain hinge.
666175. June 15, 1901. Pipe coupling.
700607. May 10, 1902. Vertical transmitter.
706291. Aug. 5, 1902. Ret. tube open receiver.
707071. Aug. 19, 1902. Pneumatic time lock.
719421. Feb. 3, 1903. 2¼-inch pressure system.
722667. Mar. 17, 1903. Intermediate machine.
746266. Dec. 8, 1903. Vertical sender, double gate.
746267. Dec. 8, 1903. Improved valve finger in 8⅛-inch tube.
749152. Jan. 12, 1904. Double-gate open receiver.

Various parts of the mechanism used by the contractors appear to have been described in the Siemans patent, together with other patents set forth in Finding IV, and later in the Batcheller improvement patents.

42 Subsequent to October 20, 1892, the date of the contract with the Pneumatic Transit Company for the experimental work in Philadelphia, and after much delay and the grant of Letters Patent for improvements of the character above described, Congress provided (32 Stats., 114) for the transmission of mail by pneumatic tubes or other similar devices. They appropriated by this Act approved April 21, 1902, for the service of the Post Office Department for the fiscal year ending June 30, 1903, the sum of $500,000, payable to contractors under authority of the Postmaster General for a period not exceeding four years, for the transmission of mail by pneumatic tubes. The Postmaster General was forbidden to enter into contracts prior to June 30, 1904, under provisions of the Act and the contracts were not to involve an annual aggregate expense in excess of $800,000, but such contracts only were authorized subsequent thereto as might from time to time be provided for in future annual appropriation Acts for the postal service. All provisions of law contrary to those contained in said Act of 1902 were in terms repealed.

IX.

The evidence does not establish to the satisfaction of the court that James W. Beach, the claimant herein, was the first inventor of the devices for pneumatic transportation used, operated, and conducted for the transportation of mail matter by persons contracting with the United States or by the agents of the United States.

X.

The evidence does not establish to the satisfaction of the court that the letters patent issued to the claimant, James W. Beach, covered the same devices actually put into practical operation and used by

the corporation which, under an act of Congress, contracted with the Postmaster-General for transmitting mail matter through pneumatic conveyers.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover and that the petition be dismissed.

HOWRY, J., delivered the opinion of the court:

The voluminous record in this cause (comprising several thousand pages), the character of the evidence, expert and otherwise, and the numerous exhibits pertaining to the art of pneumatics; the alleged appropriation by Government of plaintiff's patented invention for transmitting mail by means of pneumatic tubes; the enormous sum demanded as damages ($20,000,000) upon the theory of contract for the use of plaintiff's alleged improvements and the persistence
43 with which plaintiff has urged his complaint in the Executive Departments and in this Court, combine to make this case one of unusual character and interest. The view we take of the controversy brings the questions within a somewhat narrow compass, but it is believed that every issue of fact and law necessary to a right determination has been considered within the limits of this opinion.

Eliminating all questions relating to the alleged infringement of plaintiff's improvements for the present, not only for want of jurisdiction of the alleged tortious acts, but also because of the amended petition which proceeds entirely upon the assumption that a contract existed with the plaintiff, the first thing to consider is the authority of the Postmaster-General and the action taken under that authority on the proposals.

The first dealing of the Government for the more rapid dispatch of mail matter between large cities and post-office stations and transportation terminals by means of pneumatic tubes limited the authority of the Postmaster-General. Section 6 of the Post-Office appropriation act of July 13, 1892 (27 Stat. L., 145), provided: "That the Postmaster-General is hereby authorized and directed to examine into the subject of a more rapid dispatch of mail matter between large cities and post-office stations and transportation terminals located in large cities by means of pneumatic tubes or other systems, and make report upon the expense, cost, and advantages of said systems when applied to the mail service of the United States, and the sum of ten thousand dollars is hereby appropriated therefor."

Pursuant to this authority the Postmaster-General published in several newspapers the advertisement set forth in the findings and under date of August 30, 1892, plaintiff answered, making a proposal stipulating that the same should not be binding upon him unless the conditions of his letter containing his proposal should be accepted by the United States, and that he should be notified of said acceptance on or before the 1st day of August, 1893.

September 15, 1892, the Postmaster-General appointed a commission of three expert postal officials, as required by the appropriation act, to examine into the merits of the pneumatic tubes and other systems advertised for. This commission reported on September 29, 1892, that they had examined into the merits of pneumatic tubes and other systems set forth in the advertisement and that 8 separate proposals were regularly presented within the time mentioned in the advertisement.

Among the 8 mentioned by the commission notice was taken of the plaintiff's proposal, accompanied by the statement that it appeared to the commission from his bid that he would make a contract to construct experimental lines for a consideration to be mutually agreed upon and would sell or lease the same upon the condition that the experimental line was to be in readiness within four to twelve months from October 1, 1892. The report of the commission was accompanied by a statement that one proposal had been made without objection on the part of the Government to purchase or rent, which was more favorable than any other; and for that reason and because no one of the other bids offered any definite terms in giving a specific service of a practical character within the near future, this proposal was recommended for acceptance.

44 An offer, submitted by a company with which plaintiff had no connection, to put down pneumatic tubes to connect two offices in the streets of Philadelphia without expense to the Government and without charge for one year's use of the same and without liability thereafter was the one recommended as highly advantageous, because it would enable the Postmaster-General to make an immediate and practical test of the pneumatic system. The recommendation was emphasized by the statement that an arrangement could be made with the designated company for the construction of an experimental line without passing upon the merits of the system itself, which, in the opinion of the commission, was a matter to be considered after the experiment. This left the commission the opportunity, which was stated by them to be their purpose, to give future consideration to each one of the systems submitted by the various bidders on the original call for bids in that behalf.

We are now dealing with the contention of express contract, and here it must be noted that correspondence not arising out of the advertisement and plaintiff's immediate responses thereto but subsequent to the occasion which called forth the bids and action upon them is inadmissible to establish the alleged express agreement. The advertisement called for a full description of the tube or device, the kind and quantity of motive power used in operating the same, the method of its application, and the capacity of the tube and apparatus. It likewise called for an offer to submit a test; for the precise place and terminals where it should be proposed to conduct the test; for the date at which the tube or device would be in condition to be tested, and the time that would necessarily be occupied in making a test; and, generally, anything else whereby the Postmaster-General could judge of the relative value of the several tubes or devices that might be submitted and the adaptability of each to

the service proposed to be inaugurated if the tests justified anything beyond the experimental stage of the matter.

Plaintiff's response to the advertisement did not give the information which enabled the Postmaster General to judge of the value of his tube or device. It was not letters patent that were called for by the advertisement as plaintiff seems to have supposed, but tubes or devices in a condition to be tested at a time and place to be mentioned by the person answering the bid, so that the Postmaster-General could judge of the value of the tubes under experiments to be made for the contemplated service. It was not incumbent on the plaintiff to transmit his letters patent at all except as they met the conditions of the advertisement with the other things called for.

Although there was nothing contained in the original proposition of the plaintiff (in answer to the advertisement) which included an offer to submit to any test at all, the description which accompanied same contained an offer to submit to a test of his tube, and named the precise place and terminals where the proposed test should be conducted, as well as the date at which plaintiff's tube or device would be in a condition to be tested and the time that would be occupied in making the test.

It is clear that the plaintiff's bid was entirely insufficient to establish anything like an agreement to pay him anything. The advertisement and plaintiff's bid under it made none, and the general correspondence made none. On the face of the act carrying a small appropriation for an examination into the subject there was no authority given by the law-making power to any of its officers or agents to bind the Government to anything. The act carried its own limitations and plaintiff was bound to know this independent of the advertisement. In the experimental stage of the matter which Congress wisely provided for, the Postmaster-General was without authority to contract with anybody for the permanent use or purchase of any kind of a patent which would bind the Government to pay anything.

Under an agreement made October 20, 1892, between the Pneumatic Transit Company of New Jersey and the United States, it was provided that the party of the first part should be permitted to enter the post-office building at Philadelphia and lay at its expense a line of two parallel pneumatic iron tubes connecting the main office with a sub-office of that city. The company was to pay all expenses connected with the construction, maintenance, and operation of the tubes and to remove them when required. Upon completion of the work, at its expense, the company agreed to turn over these penumatic tubes and all the appurtenances connected with their operation to the Post-Office Department for the period of one year from the date of the completion of the tubes for such practical tests as might be given to their operation, but without cost to the United States. At the expiration of one year from completion or at any intermediate date the company further agreed to lease these pneumatic tubes to the United States year by year, or to sell, assign, and transfer the same to the Government at the cost of the company, including authority for the use by the Government of all the inventions in

said pneumatic tubes and the appurtenances and devices connected with them, which at the time of the contract were covered by letters patent or which at the subsequent time stated might be covered by letters patent, by license, sale, or assignment. Similar contracts were entered into by the Postmaster-General for like transportation of mail at New York, Brooklyn, and Boston. These preliminary contracts were the basis of the authority subsequently given by Congress to the Postmaster-General to contract for the permanent system which is now in use because it appears that these tests were ultimately successful.

Subsequently, and after much delay and the grant of letters patent for improvements upon the original patents, Congress provided (32 Stat. L., 114) for the transmission of mail by pneumatic tubes or other similar devices. They appropriated, by this act approved April 21, 1902, for the service of the Post-Office Department for the fiscal year ending June 30, 1903, $500,000, payable to contractors under the authority of the Postmaster-General for a period not exceeding four years for the transmission of mail by pneumatic tubes. Public advertisement was required to be made where the service was to be performed, and contracts for this service were made subject to the provisions of the postal laws and regulations relating to the letting of mail contracts except as otherwise provided by the act. No advertisement authorizing contractual relations with anyone was permissible until after a careful investigation as to the needs and practicability of such service. The act authorized the rejection of any and all bids, and no contract was to be awarded except to the lowest responsible bidder tendering full and sufficient guaranties to the satisfaction of the Postmaster-General of his ability to
46 perform satisfactory service, and these guaranties were to include an approval bond in double the amount of any bid. The Postmaster-General was forbidden to enter into contracts prior to June 30, 1904, under the provisions of the act, and the contracts were not to involve an annual aggregate expense in excess of $800,000, but such contracts only were authorized subsequent thereto as might from time to time be provided for in future annual appropriation acts for the postal service. All provisions of law contrary to those contained in this act of 1902 were in terms repealed.

Out of these acts of Congress, first for experiments and finally for contracts through the Postmaster-General, has arisen the plaintiff's cause of action on another theory now to be stated.

The allegations of the petition attempt to make a case of contract, partly in writing and predicated on the original advertisement and correspondence, and partly in parol, founded upon the use charged of plaintiff's inventions in pneumatic tubes and devices by the Government under the authority of Congress. The petition alleges that plaintiff's proposal authorizing the use of his inventions has never been returned to him and that no offer has ever been made to reconvey to him his letters patent as they were submitted to the Postmaster-General pursuant to public advertisement; but that his proposal has been retained and is wholly under the control of the Gov-

ernment, so that he is deprived of all power over his letters patent and of all opportunity to maintain suit for their infringement; that the Government has directly or indirectly entered into the use and enjoyment of his inventions; that by reason of the execution of his proposal in writing and by reason of the retention of the proposal and by reason of the uses aforesaid, the United States have assented to the terms of his proposal and become liable to pay. These allegations attempt to make a case for which plaintiff as the party performing thinks he is entitled to recover the fair value of his property as upon an implied contract for a quantum meruit. That is to say, that if the alleged express contract be uncertain plaintiff is entitled to fall back upon the rights which resulted to him from what he thinks is the implied agreement.

Inasmuch as the forms of pleading in this court are not of so strict a character as to preclude plaintiff from proceeding upon the theory of an implied contract, this phase of the complaint will be considered. The question comes to the use and the manner of the use of the inventions and the authority under which pneumatic tubes for the transmission of mail were employed.

Plaintiff has exhibited drawings and specifications of his inventions, which he says were the same found by him to be in the use and enjoyment of the Government in the Philadelphia post-office. On this point, and as to the methods in use for transmitting mail matter, there is a vast amount of conflicting testimony of an expert as well as of a general character.

There is included in the list of patents issued by the Patent Office before plaintiff applied for any of his improvements Needham's, patented 1864; those of Wood in 1867; A. E. Beach (not plaintiff) in 1869; Siemens in 1873; Dowd's in 1875; Leaycroft's in 1876; Randolph's in 1876; Hatch's in 1879, and Ely's in the same year.

47 Horton's patent was issued about the time of plaintiff's first invention. As all of these inventions antedated the alleged improvements which plaintiff says he made upon them, and rights under most of these letters had expired by limitation, they were open to experiment and use by anyone, which included the Government.

The Pneumatic Transit Company, which was incorporated under the laws of the State of New Jersey in 1892, had in its employ one Birney C. Batcheller as an engineer. This engineer designed some of the terminal apparatus that was first used and a system of tubes and devices which carried mails pneumatically was constructed under his direction and supervision. Defendants contend that Batcheller's patents were used by the company with which the Government contracted, and it also appears from the report of the expert commission that in the main the Siemen's patent was drawn upon in the subsequent contracts in connection with the improvements which Batcheller supplied. It may be that all of the improvements designed subsequent to those of the plaintiff were utilized. Of this, however, we are not certain, nor is it material for reasons which hereafter appear. It does reasonably appear, and is material to state that some of the mechanism designed by this engineer is now in

use by the system adopted by the Post-Office Department. When these improvements were first used we do not know. These probably include ideas embodied in some of the various inventions granted many years ago, but seem to show improvements not appearing in the Beach (plaintiff's) patents, such as an eccentric shaft for carrier, patented in 1895; gate for open receiver, patented in 1896; electro-pneumatic circuit-closer, bearing rings of layers of treated cloth, electric time lock for substation, valve for releasing receiver of trams, receiver, and sender, all of which were patented in 1897; chronograph, patented in 1898, and switch mechanism, cradle trams with lever release, eccentric carrier lid, closed receiver, open receiver, and regulating by-pass, patented in 1899; carrier lid locked by detachable key, 8-inch carrier eccentric and fingered, inner carrier, packing device for annular joints, and water-tight carrier chain hinge, all patented in 1900; pipe coupling, patented in 1901; vertical transmitter, return tube open receiver, pneumatic time lock, patented in 1902; pressure system, intermediate machine, vertical sender for double gate, and improved valve finger, patented in 1903, and a double gate open receiver, patented in 1904. These are novel improvements upon all preceding inventions. Some, at least, of these improvements (and it may be all) are in use under the present system. These, together with various parts of the mechanism derived from other inventions and notably the devices described in Siemen's patent, seem to us to have been used by the contracting company. We do not definitely decide that they were so used, but in our view of this case, all those details which have been presented in the effort to show that plaintiff's property was appropriated, especially in the material allegations respecting the wave motion of plaintiff's inventions (upon which he largely rests his case), seems to be wanting in the element of identity with the tubes and mechanism finally combined and put into actual use by other agencies. The necessary things to make an implied contract are thus wanting. Not only does the complaint not state the facts necessary to make
48 a contract by implication but the findings show as between the plaintiff and defendants continual antagonism from the time the expert postal commission made their report to the time when the recommendations and subsequent investigations of the Postmaster-General led him to make a contract under the authority of Congress. The bidding having been competitive and the right having been given by law to the Postmaster-General to reject any and all bids, we must presume that right was properly exercised when contracts were made with others.

Although we might stop here, we deem it proper (while going no further into the merits of the complaint) to say that enough has been said on the facts to carry us to the reasons which underlie everything else in the case in the matter of the right to proceed. The United States manufactured nothing. They acquired nothing substantial from plaintiff by the submission of his original letters patent, and they declined to act on any of his proposals. True, by the submission of the inventions to the officers of the Government gratuitous license to use the alleged improvements was never in-

tended by Beach, nor was a tortious infringement contemplated by the United States. The use of an invention by the Government on contracts with others without the consent of the owners of letters patent is an infringement upon rights, but not a taking of property under an implied contract. In Schillinger's case (155 U. S. R., 163) (appealed from this court) it was held, citing Gibbons (8 Wall., 269), Morgan (914 Wall., 531), and Hill (149 U. S. R., 593), that the owner of letters patent for an invention who sets up in the Court of Claims that a contractor with the Government has made use of a patented invention in the execution of his contract without compensation to the claimant and against his protest, whereby there was a wrongful appropriation of the patent by the Government for its sole use and benefit, and that a right has accrued to him to recover of the Government the damages thus done to him, sets up a claim sounding in tort of which this court has no jurisdiction. This case comes within the principles of that decision, although it does not appear here that Beach protested and objected to the use of the tubes and devices actually used, except as set forth in finding V, as it did appear in Schillinger's case that the owner of the patent objected to the use by the Government of the patented invention shown there through the person with whom the Government contracted. But here, as there, the Government contracted with another and independent party. That party was the company that claimed to own the inventions which by contracts with the Government the United States saw put into actual use. If the contracting company did not apply the Beach devices and the mechanism described in his letters, the cause of action comes to an end on the facts. If the contracting company took Beach's inventions and applied his ideas to practical use in the post-offices of the cities of the country under its contracts with the Government, then the company has infringed upon plaintiff's rights as an inventor. It is, in this event, liable for the infringement at the suit of the inventor, but not in this court. The matter of the infringement by the company is something to be determined elsewhere, and not here, between the party claiming the infringement and the company charged with invading patent rights. If the Beach inventions were put
49 into actual use by the contracting company with knowledge by the officers and agents of the Government that the contractors were infringing plaintiff's patents, those conditions would make such officers and agents wrongdoers with the contracting company, but for such a case sounding in tort this court is equally without jurisdiction to proceed. Schillinger's case would cover this state of affairs in the matter of jurisdiction as much as if the facts here were exactly analogous to the facts shown in that complaint.

In this respect, as to the uses alleged by the plaintiff of his invention, the complaint counts upon a tort in which the contractors are necessarily involved by the disclosures of the record. If plaintiff's premises be true, that his property was appropriated by that company and used under its contracts with the Government in the Philadelphia post-office, the wrong would be with the company, as the Government appropriated nothing. And it should be stated here

that there is no proof showing that the Government had knowledge of any unlawful appropriation of plaintiff's invention by others. Being without jurisdiction of the company, the sole thing left to determine is the relation of the Government to the matter. Treating any infringement upon his rights as distinct from plaintiff's claim of compensation for an authorized use, there is wanting the admission that plaintiff had any title to the apparatus used. In Langford v. United States, 101 U. S. R., 341 (affirming this court), it was held that when an officer of the United States took and held possession of land of a private citizen under a claim that the land belonged to the Government the United States could not be charged upon an implied obligation to pay for its use and occupation. In United States v. Great Falls Mfg. Co. (112 U. S. R., 645 and 124 U. S. R., 581) it was subsequently held that if the United States appropriate to a public use land which they admitted to be private property they may be held as upon an implied contract to pay its value to the owner. So, in Hollister v. Benedict Mfg. Co. (113 U. S. R., 59) and United States v. Palmer (128 U. S. R., 262), title of the plaintiff was admitted. In United States v. Berdan Firearms Company (156 U. S. R., 552) a judgment of this court was sustained on an implied contract for the use of an improvement in breech-loading firearms; but there was no denial of the patentee's rights to the invention. In United States v. Lynah (188 U. S. R., 445) these authorities, with many others, were reviewed, and jurisdiction of the courts to subject the Government to the obligation of making compensation if there was a taking was sustained where the Government, in the exercise of its powers of eminent domain and regulation of commerce, through officers duly empowered by Congress, placed dams, draining walls, and other obstructions in the river in such manner as to hinder its natural flow and to so raise its waters as to overflow plaintiff's land to such an extent as to cause a total destruction of its value. Two members of the court concurred as to jurisdiction on the ground stated in the opinion of the court, and also agreed with a third member in resting jurisdiction upon a taking within the meaning of the fifth amendment to the Constitution irrespective of the question of contract or tort under that clause of the Tucker Act which vests the Court of Claims with jurisdiction of all claims founded upon the Constitution of the United
50 States or any law of Congress. Three members of the court dissented on the subject of jurisdiction, as well as on the merits growing out of the character of the taking. The Government, not denying ownership of the land, admitted that the work which was done by their officers was done by authority of Congress, but denied that the work had produced the alleged injury and destruction. The principles declared do not conflict with the rule established in Schillinger, supra, nor do they involve Government liability for the acts of those appropriating another's invention and using that other's invention in contracts with the Government. It is possible in the case at bar that the company with whom the contracts for transmitting mail by means of pneumatic tubes infringed

in more or less degree plaintiff's inventions, but with this we have nothing to do.

Nothing appearing in the findings and conclusions of the court is intended to prejudice plaintiff in any right he may assert against individuals or companies contracting with the Government for unlawfully using his inventions. If he made improvements on the pioneer patents by the use of which others are deriving the extraordinary profits which the annual appropriations for the transmission of mail by means of pneumatic tubes indicate the way is left open for him to pursue his remedy, if he has any. We have only gone into the merits far enough to define the reasons for dismissing the complaint for want of jurisdiction.

Reserving questions relating to the taxation of costs, the petition is dismissed.

Barney, J., had not been commissioned when this case was tried and took no part in its decision.

BY THE COURT.

51 V. *Judgment of the Court Dismissing the Petition.*

No. 21255.

JAMES W. BEACH
vs.
THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 29th day of January 1906, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants, the United States, and do order, adjudge and decree that the petition of the claimant, James W. Beach, be and it is hereby dismissed.

BY THE COURT.

52 VI. *Argument and Submission of Motion of Claimant for a New Trial and to Amend the Findings of Fact.*

The motion of the claimant filed April 18, 1906 for a new trial and to amend the findings of fact was, on the 17th day of February 1908, argued by the claimant, Mr. James W. Beach on his own behalf, and by Mr. Malcolm A. Coles on behalf of the defendants, and submitted.

53 VII. *Order of Court. Filed May* 20, 1909.

Court of Claims of the United States.

No. 21255.

JAMES W. BEACH
v.
THE UNITED STATES.

Order.

It is ordered that the claimant's motion for new trial be overruled.

The claimant's motion to amend findings is allowed in part and overruled in part, as per amended findings this day filed.

The judgment and opinion to stand.

BY THE COURT.

54 VIII. *Application for and Allowance of Appeal.*

Application for Appeal.

From the Judgment of the Court of Claims heretofore rendered herein (ordered, on the 20th day of May, A. D. 1909, to stand), the Claimant, James W. Beach, Attorney pro se, on this second day of June, A. D. 1909, again gives notice of, petitions for, and again makes application to the Court of Claims (or to the Chief Justice thereof, as the case may be), for the allowance of an appeal in said cause to the Supreme Court of the United States, all because of the several matters and things stated and set forth in the application for appeal hereto annexed, and hereby made a part hereof, and because also of the several matters and things, stated and set forth in the Claimant's application for appeal heretofore filed in said cause, and because of other good and sufficient reasons of record in said cause appearing, and to the end that every legal and equitable right of appeal (and otherwise) of the Claimant be fully preserved to him; the Claimant respectively further petitions and prays the Court (or the Chief Justice thereof, as the case may be) to consider herewith said last mentioned application for appeal, and to
55 grant said appeal in said cause to the Supreme Court of the United States, and order accordingly, all in such apt time, and as of such day and date, as will fully preserve to the Claimant all of his said rights in the premises upon said appeal and otherwise, and your petitioner, the Claimant, will every pray, etc.

Respectfully submitted.

By JAMES W. BEACH.
Claimant and Attorney pro se.

Filed June 2, 1909.

Allowed:

STANTON J. PEELLE.
Chief Justice.

June 11, 1909.

56 In the Court of Claims.

No. 21255.

JAMES W. BEACH
v.
THE UNITED STATES.

I, John Randolph, Assistant Clerk of the Court of Claims, certify that the foregoing are true transcripts of pleadings in the above-entitled cause; of the findings of fact and conclusion of law and opinion of the Court filed in said case; of the argument and submission of the claimant's motion for new trial and for amendment of the findings of fact, and of the order of the Court thereon; of the application for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 29 day of June 1909.

[Seal Court of Claims.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

57 Supreme Court of the United States.

No. —.

JAMES W. BEACH, Appellant,
v.
THE UNITED STATES.

Appeal from the Court of Claims.

Assignment of Errors.

57½ Index.

Assignment of Errors.....	Page 58
Appellant's Exhibit XA referred to and made part of Assignment of Error Twenty-Seventh.	71 to 74 (both inclusive).
Appellant's Exhibit XB, Motion for Rule on Defendant to show cause etc. * * * As being in contempt etc., referred to and made part of Assignment Twenty-Eighth.	Printed p'g's 59 to 74 (both inclusive) bottom p'g's 75 to 90 (both inclusive).
Appellant's Exhibit XC, being request and Demand referred to, and made part of Assignment Twenty-Eighth.	91
Appellant's Exhibit XD, Specification in part of errors alleged to have been committed, set forth in Application for Appeal and referred to in Assignment Thirty-Second.	92 to 95 (both inclusive).

58 UNITED STATES OF AMERICA,
District of Columbia, ss:

In the Supreme Court of the United States, to the October Term, A. D. 1909.

JAMES W. BEACH, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Assignment of Errors.

And now comes James W. Beach, the appellant, by James W. Beach, his attorney (attorney pro se) and says that in the record and proceedings aforesaid there is manifest error in this, to-wit:

First. The Court of Claims wrongfully erred in making its said conclusion of law (decided January 29th, 1906).

Second. In that the Court on the 29th day of January, 1906, aforesaid, wrongfully and erroneously decided as a conclusion of law, that the Claimant is not entitled to recover, and that the petition be dismissed.

59 Third. In that the Court wrongfully erred in not allowing Claimant's amended motion (in said cause filed) for a new trial.

Fourth. In that the Court wrongfully erred in entering judgment in said cause dismissing the Claimant's petition.

Fifth. In that the Court wrongfully erred in making its findings numbered IX. and X. and in failing and refusing to amend its findings numbered II, VI, VII, and VIII.

Sixth. In that the Court wrongfully erred in failing, and in refusing to find that the defendant had in said cause shown, by competent testimony, produced by and on its behalf, that the defendant was and is in the use and enjoyment of the identical device for which letters patent No. 267,319 had been issued by the Government of the United States to the Claimant, as inventor, being the device mentioned in Claimant's amended petition in said cause filed and in said finding No. II.

Seventh. In that the Court wrongfully erred in not finding for the Claimant, and the Court wrongfully erred in failing to

60 make the several requests for findings of fact heretofore in said cause requested by the Claimant. And the Court also wrongfully erred in that its said order that, "The Judgment and Opinion to Stand" was and is illegal and void, and prematurely made.

Eighth. In that the Court wrongfully erred in failing to, and in refusing to, decide as a conclusion of law, that the Claimant is entitled to recover judgment in accordance with the prayer of Claimant's amended petition in said cause filed.

Ninth. In that the Court wrongfully erred in failing to and in refusing to order and enter judgment for the Claimant in accordance with the prayer of his amended petition in said cause filed.

Tenth. In that the Court wrongfully erred in refusing to vacate

and set aside the judgment of dismissal of the Claimant's petition, by the Court ordered to be entered, and the Court wrongfully erred as aforesaid in failing to reinstate said cause upon the docket of causes in said Court.

61 Eleventh. And the Court wrongfully erred in that the action of the Court, in deciding its said conclusion of law, January 29th, 1906, and in entering its said judgment thereon and upon the findings then made, was then, and also is now, illegal, and unauthorized in law.

Twelfth. In that the Court wrongfully erred in not making and deciding on or prior to the 20th day of May, A. D., 1909, a conclusion of law upon the findings as amended (amended findings) in said cause.

Thirteenth. In that the Court wrongfully erred in omitting to find that the defendant, upon the trial of said cause, attacked the validity of said letters patent No. 267,318, mentioned in the Claimant's amended petition in said cause filed, and the Court wrongfully erred in omitting to find that the defendant had not sustained any damages on account of or by reason of any of the matters alleged or involved in said attack.

62 Fourteenth. In that the Court wrongfully erred in not deciding or making a conclusion of law upon the amended findings.

Fifteenth. In that the Court wrongfully erred in ordering the judgment and opinion to stand.

Sixteenth. In that the Court wrongfully erred in amending in a material manner and without notice to the Claimant, its said opinion so ordered "to stand."

Seventeenth. In that the Court wrongfully erred in including in its said opinion, as amended, material facts favorable to the Claimant and against the Defendant, and in neglecting to include in any of its said findings said material facts.

Eighteenth. In that the Court wrongfully erred in not allowing said Claimant's amended motion for a new trial in said cause.

Nineteenth. In that the Court wrongfully erred in not vacating, and in omitting to set aside its conclusion of law and findings as aforesaid, made and decided January 29th, 1906.

63 Twentieth. In that the Court wrongfully erred in failing and in refusing to grant relief and enter judgment in favor of the Claimant in accordance with the prayer of the Claimant's amended petition in said cause filed.

Twenty-first. And said Court wrongfully erred in that the findings by the Court of Claims of the facts in the case are not in the nature of a special verdict, or such findings as are required by law and the Rules of this Honorable Court to be made.

Twenty-second. In that said Court of Claims wrongfully erred in setting forth in part in its said findings the evidence instead of findings of fact, in the nature of a special verdict, based upon said evidence.

Twenty-third. In that said Court wrongfully erred in failing and in omitting to make and file (as required by the law and the rules of Court) their amended findings of fact and their conclusions of

law upon said findings of fact as amended "in open court" before or at the time said Court ordered the judgment and opinion to stand.

Twenty-fourth. In that the Court wrongfully erred in failing and in omitting to make any conclusion of law whatever upon said amended findings.

64 Twenty-fifth. In that the Court by amending its findings of fact changed its verdict or findings of fact upon which said judgment so entered as aforesaid on the 29th day of January, A. D., 1906, was solely based, and the Court wrongfully erred in failing and in refusing upon said amended findings to vacate and set aside said judgment and conclusion of law, and wrongfully erred as aforesaid in failing and in omitting to make and file their conclusion of law, in open court upon said amended findings, and to render judgment thereon.

Twenty-sixth. The said Court also wrongfully erred in that the record of said court does not show said amended findings or what amended findings were filed on said May 20th, 1909.

Twenty-seventh. And said Court of Claims also wrongfully erred in that said conclusion of law and judgment so entered by the Court of Claims as aforesaid on said 29th day of January, A. D., 1906 (and judgment on May 20, 1909, ordered to stand), was and is based upon criminal fraud, and the crimes of forgery, and the

65 uttering of forged paper, and the theft of part of a public record (being one of the depositions in said cause) by one Felix Brannigan then (at the time of the commission of said fraud and crimes) Assistant Attorney General of the United States and acting for and on behalf of said United States (said defendant) as its attorney in said cause, which said crime of forgery will more fully and at large appear by inspection of the document hereto annexed, and hereby made a part hereof, and marked for identification Appellant's Exhibit XA, being a certified copy of a pretended answer of the said United States by said Brannigan to Claimant's suggestion filed December 15, 1905, filed in the Court of Claims in said cause on January 6, 1906, and by reason of the commission of said fraud and crimes by on behalf of and as aforesaid the Claimant (Appellant herein) was illegally and wrongfully deprived in said cause of the use in evidence in said cause of one (said) deposition in said cause taken, and the said defendant (appellee herein) was on the trial of said cause wrongfully, erroneously, and feloniously, given the full benefit of the deposition so

66 forged in its behalf by its said attorney.

Twenty-eighth. And said Court of Claims also wrongfully erred in that the Court failed and neglected to grant the motion of the Claimant (appellant herein) for a rule upon the defendant and its attorneys to show cause why they should not be found guilty of and treated as being in contempt of said Court, etc., being the motion found at printed page 74 of the document hereto annexed and hereby made a part hereof, and marked for identification Appellant's Exhibit XB, said Exhibit XB and said Exhibit XA being the documents mentioned in the claimant's request and demand filed in the Court of Claims

June 5th, 1909, a certified copy of which said demand is hereto annexed and hereby made a part hereof and marked Appellant's Exhibit XC for use in evidence and for all lawful purposes.

Twenty-ninth. And said Court wrongfully erred in that the Court failed and neglected to decide as a conclusion of law that the defendant (appellee herein) had by attacking the validity of the Letters-
Patent No. 267,318 mentioned in Finding II, admitted the
67 contract sued on and that the evidence offered by said defendant in its said attack upon said Letters-Patent was in reduction of the damages and that the record does not show that any damages had accrued to or been sustained by the defendant (appellee herein). And the Court also wrongfully erred in failing and in refusing to make its findings in favor of the Claimant (appellant herein) and in failing and in refusing to make its conclusion of law that the Claimant is entitled to recover as he hath in his amended petition prayed, and said Court also erred in entering its said judgment and in its order abiding thereby or order for said judgment to stand. And said Court also wrongfully erred in failing and in refusing to enter judgment in favor of the Claimant (Appellant herein) and against the defendant (Appellee herein) in accordance with the prayer of the Claimant's Amended Petition in said cause filed.

Thirtieth. In that the Court wrongfully erred in entering its judgment dismissing the Petition of the Claimant.

68 Thirty-first. In that the Court wrongfully erred in entering their judgment and order dismissing the Petition of the Claimant without disposing of (by judgment or otherwise) the Amended Petition of the Claimant in said cause filed.

Thirty-second. In that the Court of Claims (acting by the Chief Justice of said Court) wrongfully erred in ordering "to the files" and in excluding from the record as a part of the Claimant's application for appeal the several matters and things in said application mentioned and therein made a part thereof (and allowed) being specifications of the errors alleged to have been committed by said Court in its rulings, judgment or decree, and in part stated and set forth in the paper, or document hereto annexed (and hereby made a part hereof) and marked Appellant's Exhibit XD, and said Court (by said Chief Justice) also wrongfully erred as aforesaid in failing to, and in neglecting to and in refusing to "certify said specifications or such alterations and modifications thereof or of the points decided and alleged for error as distinctly, fully and fairly present the points decided by the Court" in accordance with the requirements of Rule
2 of the Regulations prescribed by the Supreme Court of the
68½ United States under which appeals may be taken from the Court of Claims to said Supreme Court. And wrongfully erred as aforesaid in failing to set forth or permit to be herein set forth any specification whatever as aforesaid.

Thirty-third. And the Court wrongfully erred (as did also the Chief Justice of said court) in refusing to sign and seal a Bill of Exceptions in said cause prepared and presented to said court and by said Chief Justice ordered "to the files" May 28th, 1909.

Thirty-fourth. In that the Court wrongfully erred in making its said Finding X and *and* in not finding for the Claimant that the letters-patent issued to the Claimant James W. Beach, covered the same devices actually used by the government of the United
69 States in transmitting mail matter through pneumatic conveyers. And the Appellant as part and parcel of this assignment of error (Thirty-four) states and shows to this Honorable Court that said Finding X is contrary to all of the evidence offered by both parties to said cause and that the record in said cause shows that the defendant in due time and manner and form proved by a competent witness whose deposition was taken (and stolen as aforesaid) by and on behalf of the defendant (appellee) that the defendant was in the full use and enjoyment of the identical device mentioned and described in said Finding II.

Wherefore, the Appellant respectfully prays that all of the depositions, evidence, files and record in said cause be ordered by this Honorable Court (or so much thereof as may be found necessary) to be produced herein by the defendant for the inspection of this Honorable Court, and to the end that justice may be done.

Thirty-fifth. In that the Court erred in not granting claimant's amended motion for a new trial, and erred as aforesaid in
70 overruling claimant's motion for a new trial.

By reason whereof (and of other good and sufficient reasons of record in said cause appearing and to be assigned by or on behalf of the Appellant in due course) the Appellant prays that said judgment be reversed, etc.

By JAMES W. BEACH,
Appellant, and
By JAMES W. BEACH,
Attorney pro se.

By JAMES W. BEACH,
Counsel for the Appellant.

71 APPELLANT'S EXHIBIT XA REFERRED TO.

Court of Claims.

No. 21255.

JAMES W. BEACH
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk Court of Claims, hereby certify that the annexed is a true copy of "Defendant's Answer to Claimant's Suggestion filed December 15, 1905," filed in this office in the above-entitled case on January 6, 1906.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this 7th. day of June, A. D., 1909.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

72 APPELLANT'S EXHIBIT XA REFERRED TO.

In the Court of Claims.

No. 21255.

JAMES W. BEACH
vs.
THE UNITED STATES.

Defendant's Answer to Claimant's Suggestion in the Above-mentioned Case. Filed in the Court on December 15, 1905.

The claimant suggests to the court that the words "cross-examination" appearing on page 215 of the printed record is an error in print, and moves that the said words "cross-examination" and "cross" should be stricken out of the record. In support of the suggestion he offers a typewritten carbon copy of the deposition in question.

The claimant argues that the "deposition in question was not and could not be 'cross-examination,'" etc., and he further alleges that the deposition was taken in behalf of the defendants, and argues some other matters not pertinent to his motion.

Answer.

Referring to page 215 of the printed record, it appears that the words "cross-examination" are no part of the deposition of claimant referred to. They are merely part of the commissioner's caption to that deposition. They were not in the original typewritten copy of the commissioner who took the deposition. They were inserted by me when that copy was sent to the public printer. They are merely explanatory as showing the character of the deposition; and counsel for the defendants', of course, assumes all responsibility for that explanation. The deposition shows on its face that it is simply cross-examination. Claimant was not called to testify "in behalf of the defendants." He was not subpœnaed as a witness for de-
73 fendants. He was present at the time acting as attorney for himself; I was about to examine Mr. Dayton, on behalf of the defendants, as a mechanical expert in patent causes. The line of his examination, as an expert, included an analysis of the claims of Beach's patent, No. 267,318, and ten prior patents; also, an analysis of the Batcheller pneumatic device established for transportation of mail matter at the Post Office in Philadelphia. As Beach was present, I thought I could simplify the examination of Mr. Dayton by endeavoring to confine the issue to the claims in Beach's patent that he relied upon "in this contest" (Q.1). In that question I called Mr. Beach's attention to his former testimony. This question plainly shows that Beach was being cross-examined. That Beach understood that he was being cross-examined plainly appears from his objection to Question 2, "as incompetent, immaterial, and irrelevant." If the

claimant had been examined as a witness in behalf of the defendants it is not to be supposed that I would have allowed my own witness to "object" to any question that I might have deemed proper to propound to him. If Beach had had any knowledge of law he must have known that he was not testifying in behalf of the defendants. Beach was too ignorant or stubborn to confine the issue in his suit to any particular claim in his said patent. I, therefore, gave up the attempt to limit the issue of the case to any of the particular claims allowed in said patent, and I then said that "counsel for the Government says that he has no use for claimant's deposition and does not desire to further examine him," etc. (R. 221.), and so gave up the cross-examination in disgust, as I felt the absurdity of cross-examining an insane claimant. The claimant last testified in his own behalf at Chicago on February 6, 1903. At the close of that
74 deposition he said to the representative of the Government, Mr. Tenney, that if there was further or other question of cross-examination not fully answered, he would endeavor "to answer fully and completely," that he would "like the court to fully understand every material fact concerning this case and relating to it," and that he would be glad to answer any further questions. (R. p. 112). I gave him the opportunity in my said cross-examination to answer a few further questions, which he evaded answering.

The court, so far as I am concerned, can strike out the words "cross-examination" from said record, (p. 215) or any other part of said deposition, or the whole of it, or allow it to remain as it is—either disposition of it will neither benefit nor injure the claimant, nor benefit nor injure the defendants. I regard the claimant's suggestion and motion above-referred to as absurd vagary of a crank, who thinks that he is playing a cunning trick upon the defendants and has attempted to further argue his own side of the case after the suit had been fully argued and submitted to the court for decision a few days before.

Respectfully submitted,

(Signed) FELIX BRANNIGAN,
Assistant Attorney.

Filed January 6, 1906.

JAMES W. BEACH,
Of Counsel for Appellant.
JAMES W. BEACH,
Appellant's Attorney pro se.

75 APPELLANT'S EXHIBIT X. B. REFERRED TO.

In the Court of Claims December Term, A. D. 1907.

No. 21255.

JAMES W. BEACH, Claimant,
vs.
THE UNITED STATES OF AMERICA.

Claimant's Reply Brief on Motion for New Trial, and Other Motions.

May it Please the Court:

The advertisement of the Postmaster-General was made under an Act of Congress, an Act which carried an appropriation in respect to the subject matter of said advertisement.

The advertisement was not for experimental work as is now claimed. Said advertisement was upon the broadest lines and covered every conceivable phase of the postal service in respect to the subject named in said advertisement.

See page 3 of Findings.

After said advertisement was made the claimant on August 20, 1892, wrote to the then Postmaster-General and informed him that he (the now claimant) desired to submit a description of a pneumatic tube or device (of which he was inventor), and suitable for the rapid dispatch of mail matter, etc., and a "proposal offering to license to or otherwise invest in the United States the right to use the
76 the tube or device to lease by the year or to sell, assign and transfer it to the United States as a purchaser" (see page 4 of Findings).

In reply to the foregoing inquiry written by the claimant the then Postmaster-General under date of August 23, 1892, addressed a letter to the claimant as follows:

"PHILADELPHIA, *August* 23, 1892.

James W. Beach, Chicago, Illinois.

DEAR SIR: In reply to your letter of the 20th, I beg to say that the advertisement for pneumatic tubes states that each offer shall be accompanied by proposals to license to or otherwise invest in the United States the right to use the tube or device, to lease by the year or to sell, assign or transfer to the United States, such proposals must of course fix some price to be of any value.

Yours truly,

JNO. WANAMAKER,
Postmaster-General."

Thus it will be seen that the Postmaster-General was not seeking experimental work as is now claimed, but formal proposals under seal which would "be of value" to the United States if the proposal fixed a purchase price for the property offered, accordingly the claimant

executed his said particular description of the devices, his offer to submit to a test, the precise place and terminals, etc., with his proposal in writing under his hand and seal (in law a bond) as required, and he therein named the purchase price, and thus he at the request of the Government placed in its hands and power the very "thing of value" desired by the Postmaster-General under said Act of
77 Congress and this suit is an action brought to recover the purchase money and interest.

At page 2 of defendant's Reply Brief the number of claimant's patent is erroneously stated; the correct number of claimant's Letters Patent, dated November 14, 1882, is No. 267,318.

The record shows that within sixty days after the defendant received claimant's deed it employed the Pneumatic Transit Company of New Jersey to construct for the defendant's sole use and enjoyment the device described in claimant's said Letters Patent and by him sold to the government. The government necessarily employed some person to make the device (all of its acts are performed through the medium of some individual or corporation), and the claimant was at all times willing that it should use and enjoy the invention sold and there is no sort of analogy between the case at bar and the Schillinger case and the Russel case cited by defendant. In the Schillinger and in the Russel cases the holders of the patents protested and forbade the use of the devices and either threatened suit for infringement or were invited to bring such suit, and of course in those cases the unauthorized use of those inventions was a tort, or were tortious Acts, and therefore necessarily infringements.

In the case at bar the defendant, the United States, was then the holder of the Letters Patent; the claimant had executed his deed to the defendant and he was no longer the holder of said patent, and the claimant was at all times willing that the defendant should use and enjoy the invention sold to it and there was no infringement possible. The only wrong the defendant could do to the claimant is to withhold the purchase money.

In this case the element of tort is excluded ab initio and the defendant has attacked the validity of the patent. It is the well settled law that "where the validity of the patent is attacked
78 the defense shall come in as if the suit were on an express contract and the defendants were setting up failure of consideration.

Jabez H. Gill vs. United States, 25 Court of Claims Reports, 415.

And the defendant has not shown that it has sustained any damages through failure of consideration or otherwise.

The duty of this claimant to this Honorable Court and to himself requires that he shall fully and truly inform the court as to the actual condition of the record upon which the court has herein passed judgment, and in so informing the court the claimant desires to be respectful to the government, and polite as well as just; accordingly he has made diligent search for effective and polite words in which to describe a criminal act, without bluntly

using the words scoundrel, and criminal act, the claimant's researches in this respect have not yielded satisfactory results. I am, therefore, compelled to use the ordinary terms found in the text books on Criminal Law, and I consider that in so doing I will not offend the living, or the remembrance of the dead or that legal entity known as the Department of "Justice."

The record in this case clearly and conclusively proves that this Honorable Court upon the trial of this cause and in making its Findings and in arriving at its conclusion of law has been willfully, wrongfully and fraudulently imposed upon and deceived by or on behalf of the defendant, and that its said Findings and conclusions of law are not based upon the whole evidence as returned into court by its Commissioner, but on the contrary said action of the court rests upon either a criminal fraud in printing and fraudulent representations in respect thereto willfully made to the court on behalf of the defendant upon the trial, or upon the deliberate
79 forgery and subsequent theft of one of the material depositions returned into this Honorable Court or upon all three of said criminal acts.

See the confession, or "Answer" of the defendant, filed January 6, 1906, to complainant's suggestion, filed December 15, 1905; also see motions, affidavit and claimant's brief, filed January 29, 1908.

Said answer is in itself, in some respects, a criminal libel. In view of the defendant's said confession the court will not hesitate to grant the relief herein sought by the claimant and in granting this relief the court will not consider at this time the scope or magnitude of the offense complained of or any of its bearings. It is enough for the purpose of this motion that the court is advised by the record that in its said action the court made its Findings and conclusions of law not upon the testimony as returned into court by its Commissioner, but upon testimony a part of which had been secretly and fraudulently altered or forged by the successful party or in its interest. This Honorable Court is required to administer justice according to the rules of the common law, and the defendant in this case (by its own confession) is in contempt of this court, and because of said contempt it can not be heard herein until purged of contempt, and the court should do in this case precisely as it would do in a like case between individuals and proceed to make its Findings and Conclusions of Law in favor of the claimant and against the defendant, as by nihil dicit.

The defendant as this record shows had abundant opportunity to "cross-examine" the claimant when his deposition was taken in Chicago, Illinois, an opportunity of which it availed it-self unhindered and to the fullest extent possible, and the defendant closed its said cross-examination in the usual manner, and thereupon Mr. Allan Boyer, notary public under the laws of Illinois, re-
80 turned said deposition into court, more than two years before claimant's deposition was taken in Washington, D. C., by and on behalf of the defendant, before Mrs. Leona E. Kidwell, Com-

missioner of this court, and the record further shows that the claimant had closed his evidence upon the notice book in the clerk's office more than seventeen months before the government took his deposition on its behalf in the District of Columbia as aforesaid. In the printed (pretended) copy of this deposition used by the defendant upon the trial (notwithstanding the protest of the claimant) the certificate of the Commissioner of this court (in the caption) was secretly, wrongfully and fraudulently forged or made to appear (by or on behalf of the defendant) as "cross-examination," thus illegally and fraudulently changing the whole character of the deposition and legal rights depending thereon.

This judgment was obtained through the commission of a criminal fraud by or on behalf of the defendant, as is clearly shown of record herein.

To suppose that a witness after having been sworn and "cross-examined" in Illinois before an officer under the laws of that State can (two years after his deposition has been closed and filed in court and seventeen months after the evidence of the claimant has been closed upon the notice book kept in the clerk's office) be called by the opposite party as a witness and sworn before another officer in another jurisdiction governed by other and different laws and be "cross-examined" by the party calling the witness is to suppose the happening of an impossible event.

In determining the merits of a case the court must act solely upon the testimony as returned into court by its recognized officers and not upon depositions, any one of which are confessed to have been changed or altered either in the certificate of the officer or otherwise to meet the views and necessities of the party who subsequently became successful in the suit—Juncta juvant is a maxim.

81 The cross-examination of the claimant was formally closed in Illinois and we are told that "opportunity to cross-examine" is equivalent to actual cross-examination. * * * In having an opportunity and still declining he has had all the benefit that could be expected from the cross-examination of that witness. This doctrine is perfectly well settled."

Wigmore on Evidence, Vol. 2, Sec. 1371.

The defendant in its said "Answer" confesses the perpetration of the fraud complained of, and also confesses that the caption and certificate of the Commissioner of this court as the same appears in the carbon copy of said deposition filed by the claimant in this cause by leave of this Honorable Court are true, and in fact said carbon copy is in substance admitted to be true. The court will readily perceive the importance in every respect of the deposition in question.

It appears by the deposition which was actually taken and returned into court that the defendant proved by this witness, the government's witness, that the pneumatic devices in use by the government "are identical;" that "It is the invention for which the government granted letters patent to me (claimant) as stated in my former deposition." Thus it is seen that the defendant did enter into

the use and enjoyment of the identical device which the claimant had sold to it about sixty days before the defendant procured the Pneumatic Transit Company of New Jersey to construct for its sole use and benefit said device.

The defendant can not dispute the testimony of this, its own witness, and it is bound by his testimony. By this witness the government has proven the use by it of the identical device in question covered and included in the letters Patent so sold as aforesaid by the claimant to the defendant, on credit, and the testimony of this witness effectually disposes of the suggestion of my distinguished adversary, Mr. Coles, that the minds of the parties never met,
82 and the testimony of this witness for the defendant added to the testimony of eight or ten witnesses for the claimant, and all of the testimony of the other witnesses and all of the documents in the case is sufficient to require the action of this Honorable Court in vacating its Findings IX and X, and in finding for the claimant as requested by him.

The defendant by entering into the use and enjoyment of the device described in said proposal (which said proposal is in law a deed and as such was resting securely in the pocket of the defendant) accepted said proposal in the most emphatic manner possible, and thus also it appears that the minds of the parties met.

Chitty on Contracts, 13 Ed. (By Leby), pp. 369, 370, 371, 372.

2 Pomeroy on Contracts, Sec. 117, p. 166.

2 Pomeroy on Contracts, Sec. 119, p. 168.

The defendant by its said witness has shown that it has the identical property sold to it on credit after extended negotiations in respect thereto had, and that the defendant is in the full use and enjoyment of said property and that it has the claimant's deed therefor executed to it at the request of the defendant, and the defendant can not now be heard to say that the minds of the parties never met and thus evade payment of the purchase money.

The defendant is profiting by the stipulations of the contract and we are told that an assent may bind the party, although not express, or in writing, if it can be fairly inferred from his "profiting by the stipulations of the contract.

1 Parsons on Contracts, p. 476.

"And if one sold goods, or his land especially under seal and there was nothing in the contract or the circumstances to show that the buyer was to come into possession otherwise than by entering
83 upon the land and taking them, it would be presumed that this was intended and that the sale operated as a license to do this in a reasonable time and a reasonable way which the seller could not revoke."

2 Parsons on Contracts, p. 651.

No precise form of words is necessary in a specialty. Thus words of recital in a deed will constitute an agreement between the parties

on which an action of covenant may be maintained. All words of promise and condition will be construed into words of covenant. * * * So a license (under seal) may have effect as a grant.
2 Parsons on Contracts, p. 512.

The fact that Congress has repeatedly made appropriations for pneumatic tube service "by purchase or otherwise" while the government has been in possession of said deed and in the full and exclusive use and enjoyment of said invention is an acceptance of said proposal by law.
Vol. 30, U. S. Statutes at Large, page 442.

The mere keeping of said deed for a long period of time without either returning it or reconveying the property to the claimant operated as a conclusive presumption of acceptance by the defendant of the deed retained by it.
Postmaster-General vs. Narvell, 1 Gilpin's Reports.
Bank of U. S. vs. Dandridge, 12 Wheaton, 64.
Graves vs. Laban National Bank, 10 Bush Ky., 23.
19 American R. and cases cited Abbott's Trial Evidence, p. 45.
Smith vs. Hughes, L. R., 62, 597, 607.
Mansfield vs. Hodgdon, 147 Mass., 304, 306.
1 Parsons on Contracts, 491, Note 1.

The defendant instead of repudiating the transaction dealt
84 with the property as its own and it is obligated to pay the purchase money.
1 Sugden on Vendors, 385 (p. 252).

The assent of the defendant is inferred from its profiting by the stipulation of the contract.
1 Parsons on Contracts, 476.

The defendant has used and enjoyed the property I sold to it on credit and it should pay the purchase money named in the deed which it keeps.

Claimant's Reply to Defendant's Brief, etc.

In reply to defendant's Brief on claimant's motion filed January 29, 1908, I beg leave to say that the Department of Justice by its attitude at the present time has compelled the claimant to call a criminal fraud by its right name, this I reluctantly do and to the end that the court shall know the truth, and having performed my duty to the court I leave to the Department of Justice the unpleasant task of fixing the responsibility for the defeat of justice (and the responsibility for the fraud which has been committed within its Portals), as the wisdom of the government may direct.

This record shows that a fraud has been committed (on behalf of the defendant) upon this honorable court and upon this claimant whereby this claimant has been illegally and wrongfully defrauded herein out of more than twenty millions of dollars and the Depart-

ment of Justice instead of making haste to right the wrong thus inflicted upon the claimant through the commission of the fraud complained of is endeavoring to uphold the judgment, and keep the "goods."

85 In the plain view of a surprised nation the Department of Justice is in the position of one approving of the fraud it committed, and at the same time it artfully and diplomatically suggests (in substance) that the claimant "go easy" on Mr. Brannigan while it, reaps the benefit of the fraud which it admits was committed in this case by one of its attorneys (now deceased).

I am willing to forgive the man who is dead, I have no feeling of malice toward him, I merely want my money, and I decline to be "paid" by the simple and illegal process of altering the testimony in the case to meet the views of the defendant's attorney. The methods adopted on behalf of the government in this case for the purpose of defeating justice are astounding and inexcusable.

I understand that Mr. Coles has in substance entered a plea of not guilty, and I take great pleasure in assuring the court that Mr. Coles had no part in the commission of the fraud complained of.

I have not made any unfair criticism upon the methods of either the Department of Justice or of its late assistant attorney.

Felix Brannigan, by his written confession filed herein, is his own accuser, and the Department of Justice well knowing of the fraud by it thus confessed to have been perpetrated (in order to enable it to win this case) upon this honorable court and upon this claimant, is seeking herein to retain the proceeds of its fraudulent act. This is a just criticism, because it is the truth. Briefly and reluctantly stated the Department of Justice approves of the crime and "holds the bag." It seems to be both principal and accessory; and if the department wishes to avoid criticism it should not seek to retain an advantage obtained through fraud or through the alteration of testimony produced in court—a forgery.

86 The Department of Justice has confessed the commission of the crime. Upon what principle of law or justice can it seek to retain the benefit of the criminal act.

It is not supposable that because Mr. Brannigan or some other influence kept from my knowledge the existence of said confession until February 4th, A. D. 1908, that therefore because of some rule of the court that I must lose my money. If the able and courteous lawyer who now represents the department herein will reflect for a moment he will remember that the claimant is dealing with his sovereign and he will also remember that neither his sovereign nor its court has any rule which will operate either directly or indirectly to work injustice to a citizen, and that no such rule ever was made or ever will be made. I decline to receive my "pay" in argument designed to show the government of the United States in the roll of a confidence operator and general swindler, and a worker of criminal frauds and an approver of the crime. I decline to listen to a legal romance elaborately reciting how the government of the United States is supposed to have made a "rule" for cheating me, and then has gone behind the rule, and is there enjoying its ill got-

ten gains. As a citizen I will say that the government was not established for any such infamous purpose and I will not accept any such alleged 'justice."

The claimant insists that the defendant shall pay him the purchase money and interest due and unpaid to him. Such judgment would be in the best interests of the government and would be good for the conscience of the defendant, if it had a conscience, and would meet the approval of all mankind (now living).

The deposition which was so fraudulently changed and imposed upon the court as aforesaid, by and in the interest of the defendant, is of the utmost importance in this case. This deposition makes it clear that the findings of the court are contrary to the evidence
87 and the defendant cannot dispute the statement of its own witness, it is conclusively bound by the evidence it offered and produced precisely as said evidence was returned into court by its accredited officers.

In regard to Brannigan's confession I will say that I did not see the original (and I did not receive a copy thereof) until February 4th, A. D. 1908, and that the submission paper mentioned by Mr. Coles was signed by claimant in December, A. D. 1907, and said paper appears to have been withheld by the Department of Justice from the office of the clerk until some two or three weeks after claimant had returned to Chicago, and until after Brannigan filed his said confession, and then said paper was filed, and by this simple and dishonest process the defendant claims that it has obtained some unjust advantage over one of its citizens.

The court only speaks by the record and the record shows a finding upon the merits without disposing of claimant's suggestion in regard to said fraudulent alteration of said evidence; the action of the court in making said findings leaving said motion undisposed of is clearly erroneous, as this court is required to administer justice according to the common law.

Costs.

In the matter of costs the defendant has not by plea placed itself in position to avail itself of any provision of the statute, a statute which requires the court to exercise its discretion. The claimant has been once financially and unjustly ruined by expenditures made necessary in aiding the government to administer justice in this cause. Moreover the Right of Petition is guaranteed to the undersigned by the Constitution of the United States and the claimant cannot be fined by the government under the name of
88 "costs" for exercising the right thus reserved to him. Claimant in bringing this suit is exercising by petition, his said right of petition. Furthermore the claimant has the natural right to ask his sovereign for the payment of any sum of money which claimant believes to be due and owing to him, and it is not in the lawful power of the defendant to deprive the claimant of this natural right nor to impose costs upon the claimant for the exercise of a natural right or in respect thereto.

Dayton testified upon cross-examination that he was an employee of the government and he refused to answer proper and material questions propounded to him and by reason of his misconduct he demonstrated that he was not lawfully entitled to any fee whatever as a witness in this case.

The claimant will be very glad to receive from the defendant for money advanced and time expended by him in and about aiding in administering herein the affairs of government, the sum of $150,000, and he awaits in respect thereto the pleasure of the court and prays for such interlocutory and peremptory order in respect thereto as the court shall direct and deem meet.

After nine years of effort the defendant has discovered that the claimant's demand is for the payment of a liquid debt, being the unpaid purchase money and interest due and unpaid to him upon a contract, and that the claimant is not claiming damages for infringement.

The advertisement and proposal are evidence of the contract and by entering into the use and enjoyment of the property sold the defendant declared in the most emphatic manner possible its approval and acceptance of said entire transaction, hence the importance of said deposition as it was actually given and not as it was fraudulently made to appear.

89 In this case we have a contract—the request, the offer, the acceptance.

Upon the hearing of this motion and upon the new trial of this cause when granted by the court, the claimant will read in evidence and request the court to consider the deposition of the claimant so taken as aforesaid by and on behalf of the defendant (or a true and correct copy thereof), and all other testimony offered by the claimant of record in said cause.

Motion for Rule, etc.

The organic act under which this honorable court is organized requires that the court shall "administer justice according to the common law." And the first duty of the court is to preserve its records and preserve their integrity, this is a duty under the statute and under the common law, and to this end the court must punish through proceedings as for contempt all persons guilty of spoliation or forgery of any of its records, or depositions filed, or attempting to profit thereby. Of course the claimant does not suppose that it will be practicable to put this defendant in jail for the "mal administration of an high office and one in public trust and confidence" through the commission of said fraud and forgery, but he alleges that it is not only practicable but it is the duty of this honorable court to inflict punishment upon the guilty through depriving said defendant of a hearing herein, and by rendering judgment against said defendant and in favor of the claimant as by nihil dicit, and therefore he makes the following allegation and motion, for rule to show cause, etc.; that is to say:

The claimant respectfully shows to this honorable court and gives

the court to understand that said alteration of said deposition so confessed to have been changed and altered as aforesaid by
90 or on behalf of the defendant was and is a crime under the statutes of the United States then and now in force and was and is at the common law a crime, being the crime of misprision, generally denominated contempt, and the same was and is the "mal administration of an high office and one in public trust and confidence" and punishable by punishment less than death.

Vol. 2 Sharswood's Blackstone, pp. 120, 121, Book IV, pp. 121, 123.

Wherefore the claimant prays that the defendant and its said attorneys may by order of this honorable court to be entered herein be ruled to show cause, if so they are able to do, why the said defendant and its attorneys should not be found guilty of and treated herein as being in contempt of the law and of this honorable court, said rule and proceedings to be in conformity with the common law and the rules and statutes in such case made and provided, and the claimant further prays the court to enter such other and further order in the premises as to the court shall seem meet, and the claimant will ever pray, etc.

The claimant respectfully refers this honorable court in support of the foregoing motion to the record and files in said cause and to the foregoing and other briefs filed in said cause.

Respectfully submitted.

JAMES W. BEACH,
Claimant and Attorney pro se.

Washington, D. C., February 13, 1908.

JAMES W. BEACH,
Of Counsel for Appellant.

JAMES W. BEACH,
Appellant, Attorney pro se.

91 Copy.

APPELLANT'S EXHIBIT XC REFERRED TO.

UNITED STATES OF AMERICA,
District of Columbia, ss:

In the Court of Claims of the December Term, A. D. 1908.

No. 21255.

JAMES W. BEACH, Claimant,
vs.
THE UNITED STATES.

To the Honorable The Chief Justice and Judges of the Court of Claims, The Court of Claims, and to the Clerk of said Court.

And now comes the claimant in the above-entitled cause and respectfully requests and respectfully demands as his legal right in said

cause that the said Clerk include in and make a part of the Transcript of the Record (Record for use on appeal of said cause to the Supreme Court of the United States) the confession or pretended answer of the defendant filed in said cause January 6th, 1906, to claimant's suggestion filed December 15th, 1905, and also claimant's printed Reply Brief on motion filed in said cause February 13th, 1908, together with the claimant's motion for Rule on the defendant and its attorneys to show cause why the said defendant and its attorneys should not be found guilty of and treated herein as if in contempt, etc., which said motion is included in (as a part of said brief) and is shown at *at* page 74 thereof.

Respectfully submitted.

(Signed) By JAMES W. BEACH.
Claimant and Attorney pro se.

A true copy.
Test.
This first day of July, 1909.

[Seal Court of Claims.]

JOHN RANDOLPH.
Ass't Clerk Court of Claims.

[Endorsed:] In the Court of Claims. No. 21,255. James W. Beach vs. United States. Claimant's Request and Demand. Order. To the files for future consideration. Stanton J. Peelle, Chief Justice. Filed Jun- 5 1909. Court of Claims. Copy. Sent Ass't Att'y Gen'l. R., June 5, 1909. James W. Beach of Counsel for Appellant. James W. Beach, Appellant, Attorney pro se.

92 Copy.

APPELLANT'S EXHIBIT XD REFERRED TO.

In the Court of Claims, December Term, A. D. 1908.

UNITED STATES OF AMERICA,
District of Columbia, ss:

No. 21255.

JAMES W. BEACH, Claimant,
vs.
THE UNITED STATES.

Application for Allowance of Appeal.

To the Honorable The Chief Justice and Judges of the Court of Claims—The Court of Claims:

The undersigned, James W. Beach, the Claimant in the above entitled case and petitioner herein, respectfully hereby gives notice of, and again makes application for, and requests this Honorable Court

to, (or the Chief Justice thereof) to allow an appeal of said cause to the Supreme Court of the United States, and he, the Claimant, (your petitioner), alleges for cause of said appeal that in the record and proceedings in said cause there is manifest error, and the Claimant (your petitioner) according to rule, here and now specifies, shows to the Court and alleges that in said record and proceedings said Court erred in its findings and in its decision, conclusion of law and judgment, entered, ordered, and shown of record in said cause, that is to say:

First. The Court wrongfully erred in making its said conclusion of law (Decided January 29th, 1906).

Second. In that the Court on the 29th day of January, 1906, aforesaid, wrongfully and erroneously decided as a conclusion of law, that the Claimant is not entitled to recover, and that the petition be dismissed.

Third. In that the Court erred in not allowing Claimant's amended motion (in said cause filed) for a new trial.

93 Fourth. In that the Court erred in entering judgment in said cause dismissing the Claimant's petition.

Fifth. In that the Court erred in making its findings numbered IX. and X., and in failing and refusing to amend its findings numbered II., VI., VII., and VIII.

Sixth. In that the Court erred in failing, and in refusing to find that the defendant had in said cause shown, by competent testimony, produced by and on its behalf, that the defendant was and is in the use and enjoyment of the identical device for which letters patent, No. 267,318, had been issued by the Government of the United States to the Claimant, as inventor, being the device mentioned in Claimant's amended petition in said cause filed and in said Finding No. II.

Seventh. In that the Court erred in not finding for the Claimant, and the Court erred in failing to make the several requests for findings of fact heretofore in said cause requested by the Claimant. And the Court also erred in that its said order that, "The Judgment and Opinion to stand" was and is *o*llegal and void, and prematurely made.

Eighth. In that the Court erred in failing to, and in refusing to decide as a conclusion of law, that the Claimant is entitled to recover judgment in accordance with the prayer of Claimant's amended petition in said cause filed.

Ninth. In that the Court erred in failing to and in refusing to order and enter judgment for the Claimant in accordance with the prayer of his amended petition in said cause filed.

Tenth. In that the Court erred in refusing to vacate and set aside the judgment of dismissal of the Claimant's petition, by the Court ordered to be entered, and the Court erred as aforesaid in failing to reinstate said cause upon the docket of causes in said Court.

Eleventh. And the Court erred in that the action of the Court, in deciding its said conclusion of law, January 29th, 1906, and in entering its said judgment upon the findings then made, was then, and also is now, illegal, and unauthorized in law.

94 Twelfth. In that the Court erred in not making and deciding on or prior to the 29th day of May, A. D. 1909, a conclu-

sion of law upon the findings as amended (amended findings) in said cause.

Thirteenth. In that the Court erred in wrongfully omitting to find that the defendant, upon the trial of said cause, attacked the validity of said letters patent, No. 267,318, mentioned in the Claimant's amended petition in said cause filed, and the Court erred in wrongfully omitting to find that the defendant had not sustained any damages on account of or by reason of any of the matters alleged or involved in said attack.

Fourteenth. In that the Court erred in not deciding or making a conclusion of law upon the amended findings.

Fifteenth. In that the Court erred in ordering the judgment and opinion to stand.

Sixteenth. In that the Court erred in amending in a material manner and without notice to the Claimant, its said opinion so ordered "to stand."

Seventeenth. In that the Court erred in including in its said opinion, as amended, material facts favorable to the Claimant and against the Defendant, and in neglecting to include in any of its said findings said material facts.

Eighteenth. In that the Court erred in not allowing said Claimant's amended motion for a new trial in said cause.

Nineteenth. In that the Court erred in not vacating, and in omitting to set aside its conclusion of law and findings aforesaid, made and decided January 29th, 1906.

Twentieth. In that the Court erred in failing and in refusing to grant relief and enter judgment in favor of the Claimant in accordance with the prayer of the Claimant's amended petition in said cause filed.

Wherefore, Because of said errors and other errors on record in said cause appearing, your petitioner (the Claimant) respect-
95 fully prays that the Court will allow an appeal of said cause to the Supreme Court of the United States, and that the Court of Claims, to that end in apt time, make all proper and necessary orders and entries of record in such manner that every legal and equitable right of the Claimant in said cause be preserved to him, and that upon a hearing of said cause, upon appeal in the said Supreme Court of the United States, that the said conclusion of law and judgment be reversed, etc.; and that judgment be entered by said Supreme Court of the United States, or by and as shall be directed by said Supreme Court, in favor of the Claimant and against the Defendant in accordance with the Claimant's amended petition in said cause filed, and in accordance with the prayer of said amended petition.

And your petitioner (the claimant) aforesaid will ever pray, etc.

By JAMES W. BEACH,
Claimant, and
JAMES W. BEACH,
Attorney pro se.

Filed June 2, 1909.

Ordered:
To the files.

STANTON J. PEELLE,
Chief Justice

A true copy.
Test.
This first day of July, 1909.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims

[Endorsed:] James W. Beach, of Counsel for Appellant. James W Beach, Appellant and Attorney pro se.

Endorsed on cover: File No. 21,749. Court of Claims. Term No. 87. James W. Beach, appellant, vs. The United States. Filed July 8th, 1909. File No. 21,749.

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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1912.

No. 7.

JAMES W. BEACH, *Appellant,*
vs.
THE UNITED STATES, *Appellee.*
} APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 8, 1909.
(21749.)

BRIEF FOR APPELLANT.

(Also Certain Motions.)

JAMES W. BEACH, APPELLANT,
Attorney Pro Se.

JAMES W. BEACH,
Counsel for Appellant.

BARNARD & MILLER PRINT, CHICAGO.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1912.

No. 7.

JAMES W. BEACH, *Appellant,*
vs.
THE UNITED STATES, *Appellee.*
} APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 8, 1909.
(21749.)

BRIEF FOR APPELLANT.
(Also Certain Motions.)

MAY IT PLEASE THE COURT:

This action is in this Honorable Court upon appeal allowed by the Court of Claims.

The following is appellant's "Concise abstract or statement of the case, presenting succinctly the questions involved and the manner in which they are raised."

STATEMENT OF THE CASE.

This cause is an action upon a contract to recover the purchase money named and stipulated therein to be paid by the appellee to the appellant.

Said purchase money not having been paid to appellant, he, James W. Beach, on the 25th day of February, A. D. 1899, filed his original petition in the Court of Claims and made the United States party defendant thereto. Subsequently, on, to wit: the 12th day of February, A. D. 1904, the claimant (appellant herein), by leave of the Court of Claims, filed in said court (in lieu of said original petition) his *amended* petition, which said amended petition in substance sets forth said contract, and is in the words and figures following—that is to say:

UNITED STATES OF AMERICA }
DISTRICT OF COLUMBIA } ss.

IN THE COURT OF CLAIMS
(UNITED STATES.)

James W. Beach,
Claimant,
vs.
The United States of America. } No. 21255.
CLAIM.

AMENDED PETITION.

To the Honorable the Chief Justice and
Judges of the Court of Claims:

Now comes the claimant, by leave of court, ac-

cording to its rules and without prejudice, amends his petition in said cause filed in such manner that said petition as amended will read as follows, that is to say:

COPY OF PETITION.

To the Honorable the Chief Justice and Judges of the Court of Claims:

The undersigned, James W. Beach, your Petitioner, respectfully represents that he is a citizen of the United States residing in the City of Chicago in the State of Illinois, and that he has resided in said City for more than thirty years last past, and that he is a member of the Bar engaged in the practice of his profession as an Attorney at Law in said City.

Your petitioner respectfully alleges that prior to the 26th day of July, A. D. 1892, he had invented and received Letters Patent issued to him by the United States for, to wit: certain improvements in Pneumatic Conveyers and that said Letters Patent were then in full force and effect and that your petitioner was then the owner thereof except as to certain states and territory by him sold to the Beach Pneumatic Conveyer Company (a corporation organized under the laws of the State of Illinois) that on, to wit: said 26th day of July, A. D. 1892, the then postmaster general of the United States, pursuant to law, advertised, to wit: for bids or proposals under *seal*, which said advertisement was and is entitled "Mail Service by Pneumatic tubes or other systems" and required that the description therein mentioned "Be accompanied by a proposal offering

to license to or otherwise invest in the United States the right to use the tube or device to lease by the year or to sell, assign and transfer it to the United States as a purchaser."

Your petitioner further represents that his said invention covered by said Letters Patent was suitable for the purpose set forth or mentioned in said advertisement.

Your petitioner further alleges that in apt time and in due form (he being then and there owner of and as aforesaid) he, your petitioner, executed at Chicago in the State of Illinois and there mailed to and fully complied in every material respect with the requirements of said advertisement and filed with said Postmaster General his certain proposal in writing under *seal* (as required by said advertisement), therein and thereby offering, to wit: to license to or otherwise invest in the United States the right to use the said tube or device (conveyer) to lease by the year or to sell and assign and transfer it to the United States as a purchaser for and in consideration of a certain sum of money in said proposal in writing under seal mentioned to be paid therefor by the United States, being, to wit: the sum of Twenty Million Dollars.

And your petitioner further respectfully alleges that in law, as your petitioner is advised, the said instrument in writing, being said proposal by him so made and executed as aforesaid to the United States of America under the *seal* of your petitioner, became, was and is by reason of said instrument in writing being so executed by, to and as aforesaid

under seal in fact a *deed* and the same was and is *irrevocable* and that "Equity regards as done that which was agreed to be done."

And your petitioner further alleges that said deed or proposal has never been returned or offered to be returned to your petitioner, nor has the United States of America or any officer thereof ever offered to reconvey to your petitioner said Letters Patent or any interest therein and said deed or proposal has been retained by and is and remains wholly under the control of the said United States and has so been and remained since, to wit: the 7th day of September, A. D. 1892, and as your petitioner is advised wholly and completely beyond the power and authority in the premises of your petitioner and that by reason thereof your petitioner was and is wholly deprived of all power over said Letters Patent and of all power to maintain suit for infringement of said Letters Patent.

Your petitioner further respectfully alleges that the said United States has kept and retained and still retains said deed, being said proposal in writing as aforesaid and your petitioner is informed and believes that the Government of the United States has since the time last aforesaid entered into and is now either directly, or indirectly, through contracts or otherwise with certain persons or corporations, in the use and enjoyment of the said device or invention of your petitioner, being the invention mentioned in said proposal and described in the description thereof by your petitioner filed with said proposal or deed in the office of the postmaster gen-

eral or of the Post Office Department of the said United States.

Your petitioner further alleges that he has elected to require and hereby respectfully demands of the United States of America payment to him of the said consideration for said sale, to wit: licensing, assigning and investing in the United States being the said sum of Twenty Million Dollars mentioned in the said proposal or deed so executed and delivered to the United States by your petitioner at its request as aforesaid.

And your petitioner claims that by reason of the execution by your petitioner to the United States in accordance with the said advertisement or request of the United States of said proposal in writing under the seal of your petitioner and that by reason of the retention thereof by the United States and failure of the said United States to either reconvey to your petitioner the interest in said Letters Patent covered by and included in said proposal in writing and retention by the United States as its own property as aforesaid, the said United States assented to said proposal and thereupon the contract of sale of said Letters Patent to the United States became, was and is complete, and the said United States became, was and is by reason aforesaid indebted to and bound both in law and equity to pay to your petitioner the said consideration, being, to wit: the said sum of Twenty Million Dollars.

Your petitioner further alleges and claims that he has caused a certain inquiry or investigation to be made concerning the use by the Government of said

invention since the receipt by the Government of said proposal in writing, and as a result of said inquiry and otherwise your petitioner believes and he therefore alleges upon information and belief that the Government of the United States since the receipt by the said postmaster general of your petitioner's said proposal in writing so executed to the United States as aforesaid under the seal of your petitioner and has since (as your petitioner is informed and believes), to wit: the first day of March, 1893, been and is now daily directly or indirectly making use of said invention or device in the transmission of its mails, being substantially the invention or device mentioned and described in said Letters Patent or described in the particular description thereof filed at the time and as aforesaid with said proposal in writing in the office of the postmaster general as aforesaid. By reason of which said use as aforesaid of said invention or device by and as aforesaid your petitioner claims that the United States has *assented* to the terms of said proposal and then and there became, was and is liable to pay to your petitioner the consideration mentioned in said proposal, being, to wit: said sum of Twenty Million Dollars.

Your petitioner further alleges that the Government of the said United States since the receipt by the said postmaster general of said proposal or bid by the petitioner so executed in writing and delivered to the United States as aforesaid under the hand and seal of your petitioner in compliance with and in response to said advertisement, and while and during the time that it (the said United States)

was in the custody and possession of said proposal or bid it (the said United States) did on, to wit: the first day of March, A. D. 1893, with the consent of petitioner (the vendor) at and within the said United States enter into the use and enjoyment of the device, letters patent and invention so secured to the petitioner by letters patent and by him in and by said bid so offered for sale to the said United States as aforesaid whereby and by means whereof (aforesaid) the said United States on, to wit: the day last aforesaid, *assented* to the said proposal or bid and the terms and conditions thereof and then and there and thereby promised and agreed to pay for a good and valuable consideration by it received and moving from the claimant and became and was (and now is) justly and legally indebted to and liable to and obligated and bound to pay to the petitioner (the claimant) on, to wit: the first day of September, A. D. 1893, the consideration mentioned in said proposal or bid, being said sum of Twenty Million Dollars.

Your petitioner further alleges that the said Government of the United States after the receipt by it of said proposal or bid did not reject said proposal or bid, but that it (said government) did on the contrary retain said proposal or bid, and did, while in the lawful custody and possession thereof, make by law appropriation of money in express terms "for pneumatic tube service or other similar device by purchase or otherwise" being the service and pneumatic tube and device described, mentioned and included in said advertisement, letters patent and proposal or bid) and did on, to wit: the first day of

March, A. D. 1893 (at and within the United States of America and with the consent of the petitioner, the vendor) enter into the use and enjoyment of said device, invention and letters patent so to it offered for sale as aforesaid by the petitioner in and by said proposal or bid as aforesaid, whereby and by means whereof (aforesaid) the said Government of the United States on, to wit: the day last aforesaid, *assented* to said proposal or bid, and became (and then and thereby for a valuable consideration by it received and moving from this petitioner) and was on, to wit: said first day of March, A. D. 1893 (and is now), justly and legally indebted to, liable to and obligated and bound to pay to the petitioner on, to wit: the first day of September, A. D. 1893, the consideration (purchase money) mentioned in said proposal or bid, being said principal sum of Twenty Million Dollars.

Your petitioner further alleges that a valid and subsisting express contract was duly entered into at and within the State of Illinois by and between the claimant and the said United States (being the contract hereinbefore stated and alleged) and that the parties thereto and herein did at the time of the execution thereof adopt as and include in and as a part and parcel of said contract Section 2 of Chapter 74 of the Revised Statutes of the State of Illinois, then in full force and effect as a public law of said state, and that the said United States has delayed payment to the claimant of said purchase money, and that said delay has been and is unreasonable and vexatious, whereby and by means whereof the said United States was and is further

legally obligated and bound to pay to the claimant the further and additional sum of five *per centum per annum* of and upon said sum of twenty million dollars from the first day of September, A. D. 1893, to the date of entering judgment herein.

Your petitioner further alleges that he has applied to the now postmaster general for payment of, to wit: the consideration mentioned in said proposal in writing under seal, but that no part of said consideration has been paid to your petitioner, and that all final action concerning said matter by said Post Office Department and postmaster general, so far as your petitioner is advised, is embraced in the original communications from said Department which were by your petitioner received and copies of which said communications are hereto annexed, marked respectively Exhibit A., Exhibit B., Exhibit C.

Your petitioner further alleges that he is the owner of said claim, that no assignment or transfer of said claim or of any part thereof or interest therein has been made; that the claimant believes that he is justly entitled to the amount therein claimed from the United States, to wit: Twenty Million Dollars, after allowing all just credits and off sets, that the claimant has at all times borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said government; and that he believes the facts as stated in said petition to be true.

Wherefore your petitioner prays that the court will enter judgment herein in favor of your peti-

tioner and against the said United States in the amount of and for to wit: said sum of Twenty Million Dollars and that the court will also enter judgment herein in favor of your petitioner and against the said United States in the further and additional sum of *five per cent. per annum* of and upon said sum of Twenty Million Dollars from the first day of September, A. D. 1893, to the date of entering judgment herein, and that the court will grant unto your petitioner such other and further or other and different relief in the premises as justice may require.

And your petitioner will ever pray, etc.

JAMES W. BEACH,
Claimant (Petitioner).

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

STATE OF ILLINOIS, } ss. In the Court of Claims.
COOK COUNTY. }

James W. Beach, being first duly sworn, on oath states that he is the claimant mentioned in the foregoing petition, and that he has read said petition and that the same is true except as to matters therein stated upon information and belief and that as to those matters he believes them to be true.

JAMES W. BEACH,

Subscribed and sworn to before me this 23rd day of February, A. D. 1899.

RICHARD B. TWISS,
Notary Public.

[NOTARIAL SEAL.]

JAMES W. BEACH,
Claimant (Petitioner).

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

STATE OF ILLINOIS, COOK COUNTY. } ss. In the Court of Claims.

James W. Beach, being first duly sworn, on oath states that he is the claimant mentioned in the foregoing petition, and that he has read said petition as amended, and that the same is true except as to matters therein stated upon information and belief, and as to those matters he believes them to be true.

JAMES W. BEACH.

Subscribed and sworn to before me this first day of February, A. D. 1904.

ALLEN BOYER,
[NOTARIAL SEAL.] *Notary Public,*
Cook County, Illinois.

Pr. Tr. of Rec., pp. 1, 2, 3, 4, 5, 6.
Tr. of Rec., pp. 1-6.

Traverse filed December 14, 1905, as follows, that is to say:

"And now comes the Attorney General on behalf of the United States and answering the petition of the claimant herein denies each and every allegation therein contained and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General."

(Rec., p. 9.)

Depositions were taken on behalf of the parties, and said depositions were returned into said Court of Claims by its duly accredited officers, and were

there duly filed. Thereafter the record in said cause was unlawfully altered on behalf of the defendant (appellee) by and in the manner stated and set forth in appellant's assignment of error *twenty-seventh* (appearing at pages 48 and 51 of the transcript of record and printed by the government).

On the 14th day of December, 1905, said cause came on to be heard. The cause was argued by the claimant, James W. Beach, on his own behalf, and by Felix Brannigan, for the defendant, and submitted.

Tr. of Rec., p. 10.

"Findings of fact (*as amended* and conclusion of law and opinion) of the court filed as of January 29, 1906."

"This case having been heard by the Court of Claims the court *upon* the *evidence* makes the following

"FINDINGS OF FACT."

I.

The claimant, James W. Beach, was and is a citizen of the State of Illinois and of the United States, residing in the City of Chicago, and has at all times borne true allegiance, *etc.* (finding of loyalty), and that he is the owner of the claim sued on, *etc.*

II.

Prior to July 26, 1892, the claimant herein, James W. Beach, had been granted letters patent by the United States, for an invention relating to pneumatic transportation, and known as Letters Patent

No. 267,318, and dated November 14, 1882. The object of said letters patent was set forth to be an improvement by said Beach on inventions theretofore granted relating to pneumatic transportation. * * * (Here follows a very meager and imperfect description of said invention (letters patent). Neither drawings, specifications or the claims allowed are shown or set out.

Tr. of Rec., p. 10.

III.

Prior to July 26, 1892, the claimant herein, James W. Beach, had been granted letters patent by the United States for an improvement relating to pneumatic transportation, and known as Letters Patent No. 444,038, and dated January 6, 1891. * * * (Here follows an imperfect description of said device. Drawings, specifications and claims allowed are wholly omitted from the finding.)

Tr. of Rec., pp. 10, 11.

IV.

Ten prior patents were issued by the United States Patent Office for original and new and useful improvements in pneumatic conveyors or devices for the transmission of letters, messages and small packages through small pipes as follows:

Needham patent of September 6, 1864.

Wood patent, of May 28, 1867.

A. E. Beach patent, October 26, 1869 (not the same person as the plaintiff).

Siemens patent, of July 26, 1873.

Dowd patent, of May 18, 1875.

Leaycraft patent, of June 13, 1876.

Randolph patent, of September 12, 1876.

Ely patent, of December 13, 1879.

Hatch patent, of December 23, 1879.

Horen patent, of April 11, 1882.

Tr. of Rec., pp. 11, 12.

V.

This so-called "Finding" is a *mere recital of evidence* In this finding is *set out, as evidence only,* (and *without* finding of fact, in respect thereto), said advertisement of the Postmaster General, also a letter from the claimant to the Postmaster General, stating that he (claimant), desires to submit under said advertisement a description of a pneumatic tube, or device, of which he is the inventor and owner, and asking to be informed by the Postmaster General whether claimant's intended proposal *should* or should *not* name a *price* at which he as the owner aforesaid will so *license, lease* or *sell,* assign and transfer to the United States the right to use said tube or device, and in this finding is set out the reply of the Postmaster General to claimant's said letter. In which reply the Postmaster General informed claimant as follows, that is to say: "Said proposals must, of course, *fix some price to be of any value.*"

This finding (V) also sets out the proposal of James W. Beach (appellant), also a letter from Beach to the Postmaster General in connection with

the annexed (said) proposal in which letter Beach stated as follows: "Aside from all feeling of covetousness, the amount (purchase money) named (in said proposal) is *not* a *tithe* of the *actual value* of the inventions.

In this finding (V) is also set out a full and particular description of the inventions, an offer to submit to test, and the precise place and terminals and an estimate of cost of construction, and all other matters called for by said advertisement. The above mentioned description, *etc.*, was transmitted to the Postmaster General *with* the proposal of the Beach Pneumatic Conveyor Company, and the Court of Claims say in said Finding V that "The description which accompanied *claimant's proposal* of August 30, 1892, *was identical* in substance with the foregoing description, of the Beach Pneumatic Conveyor Company."

(See Pr. Tr. of Rec., p. 25.)

Finding V also sets out a letter from Beach to the Postmaster General, which was forwarded with his said proposal and description, etc. And said Finding V also sets out the invitation of the Postmaster General to attend the opening of the bids, and the telegram of Beach in response thereto. Said Finding V also sets out a letter of Beach to the Postmaster General, dated Chicago, October 8, 1892, in which letter, among other things, Beach said:

"I assume that the government desires to secure the *best device and patents*, the use of which will not end in loss or disaster to the government, * * * and I again call your attention to the claims al-

lowed me in said patents. In writing this I am to be understood as insisting upon the *merits* and *priority* of our *inventions and patents.*"

Tr. of Rec., pp. 12 to 28.

VI.

In this finding the court states that the court is not satisfied that plaintiff's patent were conveyed or delivered to the Postmaster General.

Record, p. 28.

VII.

Seven other persons or companies answered said advertisement.

On September 15, 1892, the Postmaster General appointed a commission of three postal officials to examine into the merits of the pneumatic tubes and other systems advertised for. Said committee reported September 29, 1892, that eight separate propositions were regularly presented, and said propositions were all referred to in said report, including the proposal of claimant and they recommend "that the offer known as No. 3 submitted by the Pneumatic Transit Company of New Jersey to put down in the streets of Philadelphia between the postoffice and the East Chestnut street branch postoffice pneumatic tubes to connect these two offices be accepted." * * * "The committee desire as well to emphasize that in making recommendation that an arrangement be made with the Pneumatic Transit Company of New Jersey for the construc-

tion of an experimental line in Philadelphia, it does *not* wish to be understood as passing on the *merits* of the system itself, that being a matter for consideration hereafter, in like manner as *it will be our purpose to give consideration to each one of the systems that have been submitted.*"

Said Finding VII, at page 30 of the record, also pretends to set out the contract entered into between the Postmaster General and said Pneumatic Transit Company of New Jersey pursuant to said report. But the truth is that the document set out by said court in said finding as said *entire* contract *is in fact only* a *part*—a *fragment* of said contract —as will appear from inspection of lines 7 and 8 from the *bottom* of page 30, of the transcript of record, the "proposition" of said company ("which said *proposition* is referred to and made a part of said agreement"), is wholly *omitted* from *this record*, although said proposition *was* read in evidence in the Court of Claims. (Said proposition so introduced in evidence contained a description in *detail* of the device agreed to be constructed by said Transit Company for the use of the government, and if said "details" had been set out in said finding, this honorable court could (by comparing said "*detail* description" with claimant's said patent No. 267,318) readily see that the machine agreed to be constructed by said Pneumatic Transit Company for the *sole use of the government* would, when completed be the *identical* device by the claimant offered for sale to the United States, in and by his said proposal so made as aforesaid in response to said advertisement and at a price therein named at the request of the government.

Similar contracts were entered into by the Post-office Department for like transportation of United States mail at Philadelphia, New York and Brooklyn, New York, and at Boston, Massachusetts.

Tr. of Rec., pp. 28-33.

VIII.

The Pneumatic Transit Company, which was incorporated under the laws of New Jersey in 1892, had in its employ as an engineer one Birney C. Batcheller, and he designed some of the terminal apparatus that was first used in Philadelphia and a system of tubes and devices which carried mails "pneumatically" was constructed under his direction and supervision. While in the employ of said company Batcheller extensively investigated the subject of pneumatics and subsequently made application for and was granted letters patent. (Here follows a list of 30 patents dated at various times between May 28, 1895, and January 12, *1904*.) (NOTE: Finding VII shows that the Pneumatic Transit Company furnished the *work, labor and materials*, and built and completed the pneumatic device in Philadelphia for the *sole use of the government* in the year 1892 —being about *three years before Batcheller ever had a patent of any sort* as appears from inspection of this record.) Said Finding VIII further states that various parts of the mechanism used by the contractors appear to have been described in the Siemens patent, together with other patents set forth in Finding IV, and later in the Batcheller improvement patents. Subsequent to October 20,

1892, the date of the contract with the Pneumatic Transit Company for the experimental work in Philadelphia, Congress provided (32 Stats. 114) for the transmission of mail by pneumatic tubes or other similar devices.

They appropriated by this Act (approved April 21, 1902), for the services of the Postoffice Department for the fiscal year ending June 30, 1903, the sum of $500,000, payable to contractors under authority of the Postmaster General for a period not exceeding four years, for the transmission of mail by pneumatic tubes. The Postmaster General was forbidden to enter into contracts prior to June 30, 1904, under provisions of the Act and the contracts were not to involve an annual aggregate expense in excess of $800,000, but such contracts only were authorized subsequent thereto as might from time to time be provided for in future annual appropriation acts for the postal service. All provisions of law contrary to those contained in said Act of 1902, were in terms repealed.

Tr. of Rec., pp. 33, 34.

IX.

The evidence does not establish to the satisfaction of the court that James W. Beach, the claimant herein, was the first inventor of the devices for pneumatic transportation used, operated and conducted for the transportation of mail matter, by persons contracting with the United States or by the agents of the United States.

Tr. of Rec., p. 34.

X.

The evidence does not establish to the satisfaction of the court that the letters patent issued to the claimant James W. Beach covered the same devices actually put into practical operation, and used by the corporation which, under an Act of Congress contracted with the Postmaster General for transmitting mail matter through pneumatic conveyers.

Tr. of Rec., pp. 34, 35.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover and that the petition be dismissed.

Tr. of Rec., p. 35.

OPINION OF THE COURT.

Tr. of Rec., pp. 35-43.

V. Judgment of the court dismissing the petition.

VI. The motion of the claimant filed April 18, 1906, for a new trial and to amend findings of fact was on the 17th day of February, 1908, argued by the claimant, Mr. James W. Beach, on his own behalf, and by Mr. Malcolm A. Coles, on behalf of the defendant and submitted.

Tr. of Rec., p. 43.

VII. Order of court, filed May 20, 1909: "It is ordered that claimant's motion for new trial be overruled."

"The claimant's motion to amend findings is allowed in part and overruled in part, as per amended findings this day filed." (This record, however, does not show what amendments were made or which of said findings was amended, nor does the record show the original findings, or in what respect amendment thereof was made.)

"The judgment and opinion to stand."

Tr. of Rec., p. 44.

VIII. Application for allowance of appeal as follows, that is to say:

APPLICATION FOR APPEAL.

"From the judgment of the Court of Claims heretofore rendered herein (ordered on the 20th day of May, A. D. 1909, to stand), the claimant, James W. Beach, attorney *pro se*, on this second day of June, A. D. 1909, again gives notice of, petitions for and again makes application to the Court of Claims (or to the chief justice thereof, as the case may be) for the allowance of an appeal in said cause to the Supreme Court of the United States, all because of the several matters and things stated and set forth in the application for appeal hereto annexed, and hereby made a part hereof, and because also of the several matters and things stated and set forth in the claimant's application for appeal heretofore filed in said cause and because of other good and sufficient reasons of record in said cause appearing, and to

the end that every legal and equitable right of appeal (and otherwise) of the claimant be fully preserved to him. The claimant respectfully further petitions and prays the court (or the chief justice thereof, as the case may be) to consider herewith said last mentioned application for appeal and to grant said appeal in said cause to the Supreme Court of the United States, and order accordingly, all in such apt time and as of such day and date as will fully preserve to the claimant all of his said rights in the premises upon said appeal and otherwise; and your petitioner will ever pray, *etc.*

Respectfully submitted.

By JAMES W. BEACH,
Claimant and Attorney pro se.

Filed June 2, 1909.

Allowed.

STANTON J. PEELLE,
Chief Justice.

June 11, 1909.

Tr. of Rec., p. 44.

Certificate of assistant clerk Court of Claims:

Tr. of Rec., p. 45.

ASSIGNMENT OF ERRORS.

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA. } ss.

IN THE SUPREME COURT OF THE UNITED STATES.
TO THE OCTOBER TERM, A. D. 1909.

James W. Beach, *Appellant*,
vs.
The United States of America, *Appellee*.

ASSIGNMENT OF ERRORS.

(Specification of the errors relied upon.)

And now comes James W. Beach, the appellant, by James W. Beach, his attorney (attorney *pro se*), and says that in the record and proceedings aforesaid there is manifest error in this, *to wit*:

First. The Court of Claims wrongfully erred in making its said conclusion of law (decided January 29, 1906).

Second. In that the court on the 29th day of January, 1906, aforesaid wrongfully and erroneously decided as a conclusion of law that the claimant is not entitled to recover and that the petition be dismissed.

Third. In that the court wrongfully erred in not allowing claimant's amended motion (in said cause filed) for a new trial.

Fourth. In that the court wrongfully erred in entering judgment in said cause dismissing the claimant's petition.

Fifth. In that the court wrongfully erred in

making its findings numbered IX and X and in failing and refusing to amend its findings numbered II, VI, VII and VIII.

Sixth. In that the court wrongfully erred in failing and in refusing to find that the defendant had in said cause shown, by competent testimony produced by and on its behalf, that the defendant was and is in the use and enjoyment of the identical device for which letters patent No. 267,318 had been issued by the government of the United States to the claimant as inventor, being the device mentioned in claimant's amended petition in said cause filed and in said finding No. II.

Seventh. In that the court wrongfully erred in not finding for the claimant and the court wrongfully erred in failing to make the several requests for findings of fact heretofore in said cause requested by the claimant. And the court also wrongfully erred in that its said order that "The judgment and opinion to stand" was and is illegal and void, and prematurely made.

Eighth. In that the court wrongfully erred in failing to, and in refusing to, decide as a conclusion of law that the claimant is entitled to recover judgment in accordance with the prayer of claimant's amended petition in said cause filed.

Ninth. In that the court wrongfully erred in failing to and in refusing to order and enter judgment for the claimant in accordance with the prayer of his amended petition in said cause filed.

Tenth. In that the court wrongfully erred in refusing to vacate and set aside the judgment of dis-

missal of the claimant's petition by the court ordered to be entered, and the court wrongfully erred as aforesaid in failing to reinstate said cause upon the docket of causes in said court.

Eleventh. And the court wrongfully erred in that the action of the court in deciding its said conclusion of law January 29, 1906, and in entering its said judgment thereon and upon the findings then made, was then, and also is now, illegal and unauthorized in law.

Twelfth. In that the court wrongfully erred in not making and deciding on or prior to the 20th day of May, A. D. 1909, a conclusion of law upon the findings as amended (amended findings) in said cause.

Thirteenth. In that the court wrongfully erred in omitting to find that the defendant, upon the trial of said cause attacked the validity of said letters patent No. 267,318, mentioned in the claimant's amended petition in said cause filed, and the court wrongfully erred in omitting to find that the defendant had not sustained any damages on account of or by reason of any of the matters alleged or involved in said attack.

Fourteenth. In that the court wrongfully erred in not deciding or making a conclusion of law upon the amended findings.

Fifteenth. In that the court wrongfully erred in ordering the judgment and opinion to stand.

Sixteenth. In that the court wrongfully erred in amending in a material manner and without notice to the claimant, its said opinion so ordered "to stand."

Seventeenth. In that the court wrongfully erred in including in its said opinion, as amended, material facts favorable to the claimant and against the defendant, and in neglecting to include in any of its said findings said material facts.

Eighteenth. In that the court wrongfully erred in not allowing said claimant's amended motion for a new trial in said cause.

Nineteenth. In that the court wrongfully erred in not vacating and in omitting to set aside its conclusion of law and findings as aforesaid, made and decided January 29, 1906.

Twentieth. In that the court wrongfully erred in failing and in refusing to grant relief and enter judgment in favor of the claimant in accordance with the prayer of the claimant's amended petition in said cause filed.

Twenty-first. And said court wrongfully erred in that the findings of the Court of Claims of the facts in the case are not in the nature of a special verdict or such findings as are required by law and the rules of this honorable court to be made.

Twenty-second. In that said Court of Claims wrongfully erred in setting forth in part in its said findings the evidence instead of findings of fact in the nature of a special verdict, based upon said evidence.

Twenty-third. In that the court wrongfully erred in failing and in omitting to make and file (as required by law and the rules of court) their amended findings of fact and their conclusions of law upon said findings of fact as amended "in open court"

before or at the time said court ordered the judgment and opinion to stand.

Twenty-fourth. In that the court wrongfully erred in failing and in omitting to make any conclusion of law whatever upon said amended findings.

Twenty-fifth. In that the court by amending its findings of fact changed its verdict or findings of fact upon which said judgment so entered as aforesaid, on the 29th day of January, A. D. 1906, was solely based, and the court wrongfully erred in failing and in refusing upon said amended findings to vacate and set aside said judgment and conclusion of law, and wrongfully erred as aforesaid in failing and in omitting to make and file their conclusion of law, in open court upon said amended findings and to render judgment thereon.

Twenty-sixth. The said court also wrongfully erred in that the record of said court does not show said amended findings or what amended findings were filed on May 20, 1909.

Twenty-seventh, Twenty-eighth and Thirty-fourth. (These assignments of error are hereinafter referred to and appear in full at pages 48, 49 and 50 of the transcript of record, and are relied on as hereinafter stated.)

Twenty-ninth. And said court wrongfully erred in that the court failed and neglected to decide as a conclusion of law that the defendant (appellee herein) had by attacking the validity of the Letters Patent No. 267,318, mentioned in Finding II, *admitted the contract sued on*, and that the evidence offered by said defendant in its said attack upon said let-

ters patent was in *reduction* of the *damages* and that the record does not show that any damages had accrued to or been sustained by the defendant (appellee herein). And the court also wrongfully erred in failing and in refusing to make its findings in favor of the claimant appellant herein) and in failing and in refusing to make its conclusion of law that the claimant is entitled to recover as he hath in his amended petition prayed. And said court also erred in entering its said judgment and in its order abiding thereby or order for said judgment to stand. And said court also wrongfully erred in failing and in refusing to enter judgment in favor of the claimant (appellant herein) and against the defendant (appellee herein) in accordance with the prayer of claimant's amended petition in said cause filed.

Thirtieth. In that the court wrongfully erred in entering its judgment dismissing the petition of claimant.

Thirty-first. In that the court wrongfully erred in entering their judgment and order dismissing the petition of the claimant without disposing of (by judgment or otherwise) the amended petition of the claimant in said cause filed.

Thirty-second. In that the Court of Claims (acting by the chief justice of said court) wrongfully erred in ordering "to the files" and in excluding from the record as a part of the claimant's application for appeal the several matters and things in said application mentioned and therein made a part thereof and allowed) being specifications of the errors alleged to have been committed by said court

in its rulings, judgment or decree, and in part stated and set forth in the paper or document hereto annexed (and hereby made a part hereof) and marked Appellant's Exhibit X-D, (Tr. of Rec., pp. 63-66). And said court (by said chief justice) also wrongfully erred as aforesaid in failing to and in neglecting to and in refusing to "certify said specifications or such alterations and modifications thereof or of the points decided and alleged for error as distinctly, fully and fairly present the points decided by the court" in accordance with the requirements of Rule 2 of the regulations prescribed by the Supreme Court of the United States under which appeals may be taken from the Court of Claims to said Supreme Court. And wrongfully erred as aforesaid in failing to set forth or permit to be herein set forth any specifications whatever aforesaid.

Thirty-third. And the court wrongfully erred (as did also the chief justice of said court) in refusing to sign and seal a bill of exceptions in said cause prepared and presented to said court and by said chief justice ordered "to the files" May 28, 1909.

Thirty-fourth. (This assignment of error is hereinafter referred to as aforesaid.)

Wherefore, the appellant respectfully prays that all of the depositions, evidence, files and record in said cause be ordered by this honorable court (or so much thereof as may be found necessary) to be produced herein by the defendant for the inspection of this honorable court and to the end that justice may be done.

Thirty-fifth. In that the court erred in not grant-

ing claimant's amended motion for a new trial and erred as aforesaid in overruling claimant's motion for a new trial.

Thirty-sixth. In that the court erred as aforesaid in altering the findings of fact in said cause (findings of fact as amended) after the entry of said judgment, and without disclosing of record in said cause said alterations, or amended findings of fact or (and) what amendments thereto were made and said Court of Claims erred as aforesaid in filing or permitting to be filed in said cause said amended findings, or alterations, without an order of said court first entered of record directing that the same be filed as of some day or date in said order particularly designated. And said court erred as aforesaid in not deciding a conclusion of law upon said altered or amended findings, "in open court," in accordance with the rule in that behalf, before ordering said judgment to stand. And said court erred as aforesaid in neglecting and in refusing to vacate and set aside said conclusion of law and judgment thereon entered January 29, 1906, and erred as aforesaid in neglecting and in refusing to decide a new conclusion of law "in open court" upon said altered or amended findings, and erred as aforesaid in neglecting and in refusing to enter judgment thereon. And appellant alleges and insists that said record is erroneous otherwise, in that said record does not state, or show, in what said alteration or amendment to said findings consist, or by whom, or by what authority (if any) they were filed, or what day or date they were filed. By reason whereof (and other good and sufficient reasons

of record in said cause appearing and to be assigned by or on behalf of the appellant in due course) the appellant prays that said judgment be reversed and said cause be remanded with directions, *etc.*, or that judgment be entered herein in favor of appellant and against said appellee, *etc.*, all in accordance with the prayer of claimant's (appellant's) amended petition, *etc.*

By JAMES W. BEACH,
Appellant, and
By JAMES W. BEACH,
Attorney pro se.

By JAMES W. BEACH,
Counsel for Appellant.

Tr. of Rec., pp. 46-50 (and Exhibits 50-66).

Certified copy of a certain document filed of record by, or on behalf of, the appellee, by its then attorney, being Appellant's Exhibit "X. A." referred to *in*, and made *a part of*, the said twenty-seventh assignment of error (and printed by the Government).

Rec., pp. 50, 51 and 52 (and 48, margin, p. 65).

And being the *confession* in question.

Appellant's Exhibit "X. B." referred to and "demand" certificate of the clerk and order "To the files for future consideration." (Said confession is *also* made a part of the 28th assignment of errors.)

Rec., pp. 53-63.

NOTE: Said "Exhibit X B" contains a motion for rule to show cause why the defendant (appellee herein) and its attorneys should not be found guilty

of and treated herein as being in contempt, *etc.* This motion was never disposed of by the Court of Claims. Said motion is found at pages 61 and 62 of the transcript of record.

"APPELLANT'S EXHIBIT X C."

IN THE COURT OF CLAIMS. DECEMBER TERM, 1908.

James W. Beach, *Claimant*,
vs.
The United States. } No. 21,255.

To the Honorable, the Chief Justice and Judges of the Court of Claims, the Court of Claims and to the Clerk of said Court:

And now comes the claimant in the above entitled cause and respectfully demands, as his legal right in said cause, that the said clerk include in and make a part of the transcript of the record (record for use on appeal of said cause to the Supreme Court of the United States) the confession or pretended answer of the defendant filed in said cause January 6, 1906, to claimant's suggestion on motion filed in said cause February 13, 1908, together with the claimant's motion for rule on the defendant and its attorneys to show cause why the said defendant and its attorneys should not be found guilty of and treated herein as if in contempt, *etc.*, which said motion is

Filed December 15, 1905 and also Claimants printed Reply Brief

included in (as a part of said brief) and is shown at page 74 thereof.

Respectfully submitted,

By JAMES W. BEACH,
Claimant and Attorney pro se.

A true copy.

Test. This first day of July, 1909.

[SEAL COURT OF CLAIMS.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

Endorsed: In the Court of Claims. No. 21,255. James W. Beach *vs.* United States. Claimant's request and demand. *Order.* "*To the files* for future consideration. Stanton J. Peelle, Chief Justice." Filed June 5, 1909. James W. Beach, of counsel for appellant. James W. Beach, appellant's attorney *pro se.*

Tr. of Rec., pp. 62, 63.

Motion referred to, Tr. of Rec., pp. 61, 62, and pp. 53-63.

"Appellant's Exhibit X D," being certified copy of certain specified causes of appeal. "Ordered to the files."

Tr. of Rec., pp. 63-66.

Endorsed: James W. Beach, of counsel for appellant; James W. Beach, appellant and attorney *pro se.*

Endorsed on cover: File No. 2174, Court of Claims, Term No. 87. James W. Beach, appellant, *vs.* The United States. Filed July 8, 1909. File No. 21,749.

Tr. of Rec., p. 66.

APPELLANT'S BRIEF.

MAY IT PLEASE THE COURT:

This action was commenced in the Court of Claims by the appellant herein for the recovery of a *debt*, *i. e.*, a liquidated or certain sum of money due to him from the appellee.

Andrews' Stephens' Pleading, p. 122, § 76.

Said debt is the money consideration mentioned in a certain proposal executed by appellant in writing under his *hand and seal* and by him delivered to the appellee at its request, and by it *retained* in accordance with law and with the consent in that behalf of the parties. The proposal in question is *in fact* and in *law*, a *bond* or *deed*, (and *as such deed*, it is duly witnessed), being an instrument in writing executed under the hand and *seal* of the appellant, and by him delivered to the appellee, *at its request*, made by its Postmaster General, in accordance with the statute in such case made and provided.

Rec., p. 1.

Vol. 27, United States Statutes at Large, § 148 (hereinafter appearing).

Upon *delivery*, said *deed* became, and was, as *irrevocable* as any other *deed*, and said deed was, and is, kept and retained by the United States, with the *consent* in that behalf of the appellant, and the revocation thereof was not desired by the parties nor by either of them, nor was such revocation by the appellant legally possible either at the common

law or under the statute. And said deed was, and so is, kept, and retained by the United States in accordance with the express command of Section 3948 of the Revised Statutes of the United States (hereinafter appearing) and said appellee has assented to and accepted said deed or proposal and upon the terms therein specified, and said appellee is legally obligated and bound to pay to appellant the liquidated or certain sum of money therein mentioned—the purchase money. Appellee while retaining said irrevocable deed has repeatedly made by Act of Congress appropriations of money "For transportation of mail by pneumatic tube, or other similar devices, by *purchase* or otherwise."

Vol. 29, United States Statutes at Large, p. 646.

Vol. 30, *same*, p. 442.

Vol. 30, *same*, p. 963.

Vol. 31, *same*, p. 258. (All hereinafter appearing.)

No part of the purchase money thus appropriated by law has been paid to appellant.

The plea filed purports to deny "each and every allegation of the petition," but said plea does *not* state that the defendant "*does not owe* the said sum of money above demanded or any part thereof," nor does it state that "the supposed writing obligatory is *not its deed*," nor does it state that the defendant "*did not* undertake or promise."

A *denial* to be of value, as a pleading, must present an *issue* in accordance with the established rules of pleading. The plea filed does *not traverse*

the right of appellant to *recover* in accordance with the prayer of his amended petition.

Rec., p. 9.

And it is an elementary rule of pleading that "that which is *not traversed* by *plea filed*, is *admitted*." And it follows that the conclusion of law and judgment should have been in favor of the claimant, and not so being, both are erroneous.

It has been *held* that pleadings in the Court of Claims are not very strict. Nevertheless, an *issue* is *in law* required to be made by the pleadings, because the *issue* is the thing to be determined *by the trial*, and where (as in this cause) the appellee has not by its *pleading* put anything *in issue*, it has made no defense whatever by its pleading, and on the contrary, it thereby *admits* the right of the claimant to recover in accordance with the prayer of his amended petition in said cause filed. (Tr. of Rec., pp. 1-5.)

This is *not* an action sounding in *tort*, and, therefore, (it seems needless to say) this cause is *not* an action to recover for *infringement* of letters patent. Appellant brought this action to recover for a *breach of contract solely*, and not for a *tort* committed (as was wrongfully assumed by the Court of Claims).

Appellant's *petition* alleges the cause of action to be a breach of contract, and the cause of action by him thus alleged is not subject (in the absence of a *finding of fact* to the *contrary*) to be altered by the Court of Claims (in its opinion) into an action for *infringement*,—an action sounding in *tort*. There is as much "reason" for supposing this cause to be

an action in *ejectment* as there is for supposing it to be an action *for infringement* of letters patent.

Furthermore, there is no *finding of fact* that the government committed a *tort*, or infringement, and in the *absence* of such finding of fact, there is nothing in the record on which the court could lawfully found its argument claiming that the government was "guilty of a *tort*, and that because appellee was so guilty, the Court of Claims was without jurisdiction in the premises."

Mere *looseness* in pleading is sometimes tolerated by the court, but no court has ever waived, nor is it within the lawful power of any court, to waive the formation *of an issue*—the thing to be determined upon the trial. The plea filed in this case by the appellee is not responsive to the petition, and, therefore, no issue is formed by its plea and the defendant thereby *admits* all of the material allegations of the petition, and the conclusion of law and judgment are erroneous.

Letters Patent No. 267,318, dated November 14, 1882, and Letters Patent No. 444,038, dated January 6, 1891, were allowed, and issued by the United States (appellee), to the claimant (appellant), both of said patents being for inventions relating to pneumatic transportation, and they are the patents mentioned in said petition.

Appellant's applications for patents were *allowed* and, "The filing of an allowable application for a patent is a constructive *reduction to practice* of the invention at the date when it was filed."

Davis v. *Garrett*, 28 App. Cas. (D. C.) 9.
Cobb v. *Goebel*, 23 App. Cas. (D. C.) 75.

Johnson v. *Root*, 13 Fed. Cas. No. 7,409.
Fish, Pat. Cas. 1, 2.

And the party first to *reduce to practice* is *prima facie* the *first* inventor.

Standard Cartridge Company v. *Peters Cartridge Company*, 77 Fed. 630.
22 C. C. A. 367, affirming 69 Fed. 408.
Warren v. *Goodyear*, 29 Fed. Cas. No. 17,183.

"The presumption is that the person who obtained the patent was the *first*, and original inventor, and the *burden* is upon the person seeking to show the *contrary*, to prove it beyond a reasonable doubt."

Lewis v. *Cronemeyer*, 29 App. Cas. (D. C.) 174.
Gaylor v. *Wilder*, 10 How. U. S. 477.
Cyc., Vol. 30, p. 878, *note*, 40, 41.

The letters patent allowed to appellant were (and they remained at all times) *valid*, subsisting, letters patent.

No suit was ever instituted to cancel, or annul, said patents, or either of them. It is only, by *suit*, instituted by the government, that the United States Courts can annul or cancel a patent.

United States v. *American Bell Telephone Co.*, 128 U. S. 315.
Mowry v. *Whitney*, 14 Wall. (U. S.) 434.

The appellee attacked the validity of appellant's patent, and it is elementary, and well settled law, that "where the *validity* of the patent *is attacked*,

the *defense*, shall come in as if the suit were on an *express contract*, and the defendants were setting up failure of consideration."

Jabez H. Gill v. *United States*, 25.
Court of Claims R., p. 415.

And no damage or failure of consideration whatever is shown.

The Court of Claims was not entitled to *evidence* (nor would it have been proper or competent for the claimant to have offered evidence) in support of the *presumption* raised *by law*, that appellant was the *first* inventor—this presumption then stood as the settled and established law of this case, in favor of the appellant. And thereafter the *burden* "was upon the *appellee*, to show by evidence beyond a reasonable doubt to the *contrary*."—Finding IX, clearly shows that appellee failed to carry its said burden, for if it had by evidence overthrown said presumption of law, the court was (in such event) required and bound to find, that appellant was *not* the *first* inventor and as the court *did not* so find, it necessarily follows that said *presumption*, that the appellant *was* the *first* inventor, remains unaffected adversely by the evidence offered, and said Finding IX is unauthorized, and is erroneous, in law.

Rec., p. 34.

And further, if the Court of Claims was, (as it, in Findings IX and X states,) not satisfied, *then* it was *necessarily in doubt*, and it was *then*, the duty of said court to have applied to its then condition of *uncertainty*, the well known legal maxim as follows: "To be in *doubt* is to be *resolved*, and *every intend-*

ment of *every resolution* is to be *against* the contemplated act"—in this case, *against* making Findings IX and X.

In so far as the duty of the sovereign is concerned, the case at bar is wholly unlike a suit between individuals. In a suit between individuals the sovereign is required to merely decide between the parties litigant, but in this suit between the sovereign and the appellant (its citizen), the sovereign is required to perform *more* than a mere act of umpirage.

"To establish *justice*" is the very purpose of the government as declared in the *preamble* to the Constitution of the United States and manifestly justice could not be established in this cause *before* the sovereign was satisfied of the *truth* concerning the matters in question, nor while the sovereign remained in *ignorance of the truth.*

The record shows that the sovereign had the means of ascertaining the truth. And we are told that,

"Ye *shall know the truth, and the truth* shall make you free."

St. John, 8th Chap., 32d v.

And *until* the Court of Claims had ascertained the *truth*, and had thereby become satisfied, it was *not free*, and it had no lawful power (or moral right), to decide a conclusion of law and enter judgment in this cause.

Said record and Findings IX and X show upon their face that the sovereign was in *ignorance* of the *facts* upon which it entered judgment, being facts

which were within the power of the appellee to produce and within its bounded duty, *as sovereign*, to ascertain, *before* rendition of judgment thereon.

Moreover, the several unlawful occurrences and matters alleged in appellant's *twenty-seventh* assignment of error (Tr. of Rec., p. 48 (margin, p. 65)), unlawfully deprived the claimant upon the trial, of *evidence* properly returned into court by its duly accredited officers, and unlawfully furnished the appellee with a "deposition" which this record shows, was *purely a work of art*, entirely manuary, unlawfully done by hand—and in the interest of the appellee. All of which several matters will receive further consideration herein. If Finding IX was material, said finding could not lawfully prevent a recovery by appellant, for "*knowledge, or use* of the invention *abroad*, is no bar to the grant of the patent to an original inventor who first makes or discloses the invention *here.*"

Gibbons v. *Peller*, 28 App. Cas. (D. C.) 530.

Hall Signal Co. v. *Union Switch Co.*, 115 Fed. 638.

Fisk v. *Church*, 9 Fed. Cas. No. 4826.

Cyc., Vol. 30, p. 878, note 41.

Illinois Central R. Co. v. *Turrill* 94 U. S. 695.

Carnegie Steel Co. v. *Cambria Iron Co.*, 185 U. S. 421.

Appellee's witness testified (not here shown of record) that "The first successful use of the pneumatic system for the transportation of the mails, commenced in the United States." And it has been *held* that an impracticable *prior* device, not capable

of performing the functions of a subsequent patented device, that is practicable, and useful, is *not* an anticipation. Furthermore, in order that a prior patent may operate to defeat a subsequent patent, the two must be for the same invention.

Cyc., Vol. 30, p. 835.

Assignment of Patents.

A grant, transfer or conveyance of exclusive rights in a patent throughout a specified part of the United States is an *assignment* of the patent by whatever name it may be called. A grant, transfer or conveyance or any right or interest less than these is a *license*.

Paidus v. *Buck*, 129 Fed. 594, 64 C. C. A. 162.

Waterman v. *Mackenzie*, 138 U. S. 252.

Union v. *Johnson*, 61 Fed. 940.

Pickhardt v. *Ackard*, 22 Fed. 530.

The Fixed Law of Patents (Macomber), p. 154, § 150.

An assignment which is neither an undivided interest in the whole patent, nor an exclusive right within a certain territory is a mere *license*.

Pope v. *Gormally*, 144 U. S. 238.

The Fixed Law of Patents (Macomber), p. 154, § 150.

Whether a transfer of a particular right or interest under a patent is an assignment, or license, does not, of course, depend upon the name by which it

calls itself, but upon the legal effect of its provisions.

Waterman v. *Mackenzie*, 138 U. S. 252.

The Fized Law of Patents (Macomber), p. 154, § 150.

An *assignee* of a patent may sue in his own name for an infringement, but in order to enable him to sue, the assignment must undoubtedly convey to him the entire and unqualified monopoly which the patentee held *in the territory specified*,—excluding the *patentee* as well as others, and any assignment short of this, is a mere license.

Gaylor v. *Wilder*, 10 How. 477.

When a patentee contracts for the use, or sale of the patented article, upon the payment of certain royalties, he *cannot*, as against such *licensee*, maintain a suit *for infringement* simply upon the ground that the licensee has failed to pay the agreed sum.

Atkins v. *Parker*, 61 Fed. 593.

Hartell v. *Tilghman*, 99 U. S. 547.

The term "*Royalty*" ordinarily means specific sums paid annually, or at other stated periods, for the right to use a patented device, whether it is used much, or little, or *not at all*.

Western Union v. *Am. Bell*, 125 Fed. 342, 60 C. C. A. 220.

The Fixed Laws of Patents, p. 818.

In an action to recover royalties under a contract, it is *not* necessary for the patentee to prove that the devices made conformed to the claims of the patent.

Clifford v. *Capell*, 165 Fed. 193, C. C. A.

All interests in patents are assignable in writing.

18 Blatch. 92.

Vol. 30, Cyc., p. 943.

AGREEMENTS TO ASSIGN.

An *agreement to assign* a patent is an *executory contract*, which may be enforced in a court of equity.

Whitney v. *Burr*, 115 Ills. Rec. 289.

Searle v. *Hill*, 73 Iowa Rec. 367.

Jones v. *Reynolds*, 120 N. Y. 213.

Dalzell v. *Dueber Watch Case Mfg. Co.*, 149 U. S. 315.

Vol. 30, Cyc., p. 944, *note* 71.

An agreement to assign a patent may be enforced by suit in equity to compel specific performance.

Macon Knitting Co. v. *Leicester Mills Co.*, 65 N. J. Eq. 138.

Thaurat v. *Holub*, 80 N. Y. Sup. 1083.

Cogent v. *Gileson*, 33 Beaver 557.

Powell v. *Peck*, 11 Can. Supt. Ct. 494.

And, of course, an instrument worded as a mere license, may, on account of the actual interest conveyed, amount to an assignment.

Douglas v. *Campbell*, 24 Ohio Cir. Ct. 241.

Union Switch Etc. Co. v. *Johnson R. Signal Co.*, 61 Fed. R. 940.

Ritter v. *Serrell*, 20 Fed. Cas. No. 11866, 2 Blach. 379.

The validity of an assignment of a patent, is de-

termined by the same conditions as apply to other *deeds* or contracts.

Nicholson Pavement Co. v. *Jenkins*, 14 Wall., U. S. 452.

National Folding Box Co. v. *American Paper Pail Etc. Co.*, 55 Fed. 488.

Whether a transfer of a particular right, or interest, under a patent, is an assignment, or a license, does not depend upon the name by which it calls itself, but upon the legal effect of its provisions.

Waterman v. *McKenzie*, 138 U. S. 252.

Casey v. *Cavarac*, 96 U. S. 467.

Moore v. *Marsh*, 7 Wall. 515.

An *assignee* of a patent may bring suit in *his* own *name*, and may *transfer* the whole or a part of his interest.

Waterman v. *McKenzie*, 138 U. S. 252.

Boesch v. *Grapp*, 133 U. S. 697.

Covenants, and conditions in an assignment of a patent, do not prevent it from operating as an *absolute assignment*, where they are conditions *subsequent*, such as a stipulation as to royalty (as in this case).

Hull v. *Pitral*, 45 Fed. 94.

Affirmed in 145 U. S. 650.

Arnold Monophase Electric Co. v. *Wagner Electric Mfg. Co.*, 148 Fed. 234.

In the case at bar, there was neither fraud, nor warranty, on the part of the appellant, and "In the *absence* of fraud, or warranty, the assignee of a

patent right, cannot refuse to make the payments agreed upon, even the patent is found to be invalid."

Eclipse Bicycle Co. v. *Farrow*, 199 U. S. 581.

Wilson v. *Sampson*, 9 How 109, 13 L. Ed. 66.

Milligan v. *Lalance, Etc. Mfg. Co.*, 21 Fed. 570.

Nor can the assignee refuse payment when the patent infringes another device.

Snyder v. *Kurtz*, 61 Iowa 593.

Groff v. *Hansel*, 33 Md. 161.

Clough v. *Patrick*, 37 Vt. 421.

Cragin v. *Fowler*, 34 Vt. 326.

The patents in question have not been found to be either invalid, or infringements upon other patents, and the title thereto conveyed by appellant to the appellee (at its request), has not failed, or been questioned.

A patentee may, by his *acquiescence*, estop himself to claim the cancellation of an assignment, and a *licensee, or grantee, cannot dispute the validity* of the patent, *unless* it has been pronounced invalid by a *court of last resort*.

30 Cyc., p. 914.

And an *infringement* consists in the *unauthorized* making, using or selling of the invention during the life of the patent.

Same, pp. 771-772.

Contracts in regard to patent rights, are interpreted and enforced in the same manner as other legal engagements, and where a *license* contains no

power of revocation it *cannot* be annulled by the *licensor* without the consent of the licensee, but he must proceed, *at law*, for the breach of the contract.

30 Cyc., pp. 961-962.

A license is any right to make, use or sell the patented invention, which is *less* than an undivided part, interest, in the patent itself. A license operates only as a waiver of the monopoly as to the *licensee*, and *estops* the *licensor* from exercising his prohibitory powers in derrogation of the privileges conferred by him upon the licensee.

Cyc., p. 954.

In the case now before the court the deed, or bond (being the proposal), is retained by appellee and was considered, and action in respect thereto, was had and taken, by appellee, and it is *held*, that "*If any action* whatever, be taken on the proposal, whether this action consists in trouble (no matter how trivial), taken in consequence, by the party addressed, the proposer being cognizant thereof, makes a *binding contract.*"

Law of Contracts (Wharton), § 13, bottom p. 33.

Where a party accepts and adopts a written contract, even though it is not signed by him, he shall be deemed to have *assented* to its terms and conditions, and to be bound by them.

Furthman v. *Deters*, 206 Ill. R. 159.

The party accepting an offer, may as well signify his *assent* to an offer by *doing acts* which clearly

and unequivocally show such assent, as by express words.

If such acts are done with the knowledge of the party making the offer, they amount to an acceptance thereof.

Old Jorden Mining and Milling Co. v. *Societe Anonyme Des Mines*, 164 U. S. p. 261.

So a written contract, signed by one party, may be accepted by the other party by his assenting to it, through acting upon it.

Vol. 1, Page on Contracts, § 50, p. 88.

"No particular form of words is necessary to create an express license.

Anything which confers upon another the *right* to do an act, which *otherwise would be illegal*, is sufficient to create said license."

30 Cyc., pp. 954-955.

The rights and liabilities of the parties arise from the license contract and are determined from its terms and conditions. And where a licensee violates his express covenants, or repudiates the license, the licensor, may sue *either* for a *breach of the agreement, or* for *infringement*, where the licensee has exclusive right, within certain territory, the *patentee* cannot invade that right, and the licensee can maintain a suit against him for infringement.

30 Cyc., p. 959.

The licensee is liable during the continuation of the contract for the use of the invention referred to

therein, whether it is fully protected by a patent or not.

30 Cyc., pp. 963-964.

A license, to use a patent device in a particular territory, or at a particular establishment, or on a particular railroad, is binding upon the licensee and is an express license.

Same, p. 957.

The rights conveyed by a license must be taken subject to the conditions therein made by the licensor. The licensee has, however, the *right* to do those things which are necessary to the enjoyment of his license, such as to make a machine which he has been licensed to use * * * * So, one licensed to make and use, may add improvements.

30 Cyc., 957.

The amount of royalty to which the licensor is entitled, is the amount which has been fixed in the license agreement.

Same, pp. 953-964.

Where the offer contemplates a unilateral contract, the length of time that the offer will continue in force depends upon different considerations.

The question is (in such case), no longer, one of *accepting* the contract, but of *performing* the consideration.

Langd Contr., § 155.

The court of claims, in its discussion (at Record p. 39) of appellant's right to recover, failed to con-

sider that, there *are* contracts implied *in law*, and *also* contracts implied in *fact*. We know that "a contract implied *in law*, arises where some *pecuniary* inequality exists in one party, relative to the other, which justice requires should be compensated and upon which the *law* operates by *creating a debt*, to the amount of the required compensation."

Leake, Contr. 38.

See Burr 1005, 8 C. B. 541.

Appellee's said request, and appellant's assent thereto, and the conduct of the parties, distinctly indicates a meeting of the minds.

The United States Appellant v. *Societe Anonyme Des Anciens Etablissements Cail.*

Societe Anonyme Des Anciens Etablissements Cail.

Appellant v. *The United States* (Appeal from the Court of Claims).

Decided by this honorable court April 8th, 1912. (October 1911 Term.)

(Mr. Justice McKenna delivered the opinion of the court.)

When the appellee obtained appellant's property (deed) and failed to pay the purchase price, a "pecuniary inequity" existed, and in the *absence* of an express *promise*, to pay, the *law* would operate to *create* a *debt*, to the amount of the required compensation, and the amount of compensation is the amount which appellee knew appellant asked (in and by his said proposal then in the possession of appellee) for his said property.

In the case at bar the law did not step in (as the court of claims seems to have supposed), and *make* an entire *contract* and the terms thereof for the parties, but the *law* operated merely to, *create a debt*, to the amount of the purchase money named in said proposal, the *law* did not fix the price, or terms of sale, the law, because of said "inequalities," merely created a *debt* to the amount of said (named) purchase money.

In this case, as in the case of *Russell* v. *United States*, 182 U. S. R. 516, 530, "appellant" supposed and understood that he would be entitled to compensation and that it would be allowed and paid. In the case at bar, appellant had *good legal grounds* for so supposing because *he had assented* to the *request* of the *appellee*, and had *executed his deed* to appellee, *at its request*, and had therein named the purchase price of the property in question, at its request, and appellee received and kept said deed in accordance with the statute of the United States. In the *Russell case*, the court found that on the part of the secretary and chief of bureau (engraving and printing), it was supposed that the claimant (Russell) being an employe of the Treasury Department would *neither expect nor demand* remuneration.

But in the case at bar, it is clear that appellant *did* expect to be *paid* the purchase price named by him, and as said appellee, received and retained said deed, it is also clear, that it thereby became legally liable to pay appellant the purchase price which he named in said deed, at the request of the appellee. The appellee requested appellant to execute, to it, a deed to the property in question, and appellant

accordingly assented and executed said deed to the appellee. And there was certainly a coming together of the minds, upon negotiations had, in respect to the sale and purchase of the property in question.

If a contract or obligation is *implied in law*, at any time, the *legal liability* does *not* arise from, nor is it implied from *tort*, committed, but the obligation arises *solely* from and because of the *inequalities* existing between the parties, and in such case, the law *simply creates a debt*, to *balance* said *inequalities*, but the law does *not* make for the parties a *contract*. The law *only, creates* the *debt to balance* said inequalities, and this the law does upon the theory of an existing contract between the parties, whereby said inequalities exist, *under* said *contract*.

In this case we have the *request* of appellee, the *assent* of appellant, and the concurrence, and this completes a contract, as fully as an offer and an acceptance.

It is a maxim of the common law that any person granting a thing (as by license), impliedly grants that, without which, the thing expressly granted would be useless.

Steam Stone Cutter Co. v. *Shortsleeves*, 16 Blatch. 382.

Walker on Patents, § 296.

It is a *legal presumption*, that in all written contracts, the party read the instrument, is familiar with the provisions thereof, and that he *assented* thereto at the time of signing.

Grace v. *Adams*, 100 Mass. 505.

And that "where in the ordinary course of business, a person *receives and retains* without objection, an instrument to be kept by him as evidence of his rights in regard to the transaction in hand, the *legal presumption* is that he read and is familiar with the contents thereof, and *assented* thereto."

Vol. 2, Encyclopedia of Evidence, p. 9.

"Where one accepts a paper which he knows contains the terms of an offer, he will be bound by it, and cannot be heard to say, that he did not know what it contained."

American Insurance Co. v. *Neiberger*, 74 Mo. 167.

Fennell v. *Zimmerman*, Cyc., Vol. 9, pp. 391-392.

This record shows that appellee received from appellant "a paper which contained the terms of an offer," a paper which it *then knew was an offer* (and made at its request) and it took action in respect thereto, and it is legally, and equitably, bound to pay the purchase money therein named to appellant.

Appellee received its title by *deed*, executed by appellant, and the title not being *denied*, is *admitted*.

The Court of Claims seems to indicate (Rec., p. 40) that making the contract (shown *in part* only, and not the full and complete contract) at Rec., p. 30, was a *rejection* of appellant's proposal. In truth the action of the government was exactly *contrary* to the supposition of the Court of Claims, and *contrary*, both in *fact, and in law*.

If the court will turn to Finding VII, and will examine the 7th and 8th line from the bottom of Rec., p. 30, the court will see that the evidence there set out (in lieu of the *findings*, required by law, and the rules of court) does *not* contain the whole contract in question—the "propositions" referred to therein and "*therby made a part of the agreement*" are wholly *omitted* from said finding. Appellant respectfully insists that said finding *shall disclose the whole truth.* (All men will agree that, "there is *no falsehood*, so *dangerous*, as a *half truth.*")

The part of said contract which is most important for this honorable court to understand, and which is most important to appellant, is wrongfully and erroneously omitted from the recital of evidence in said finding. If said "propositions" had been set out, and shown in said recital, or so-called Finding VII, it would appear therein, and therefrom, that said Pneumatic Transit Company of New Jersey agreed to build, for the exclusive use of the government, a particularly described machine or device, being a machine, which, as this honorable court could then have seen by comparison with the patents in question, issued to appellant, as *also* by comparison with said "particular description" thereof, would be, when completed, the same machine, in every particular, and essential, as the device purchased by the appellee from appellant (and for which it then held, and now holds, appellant's deed.

Within less than sixty days after appellant executed his said proposal to the government, the government by its said contract employed said Pneu-

matic Transit Company of New Jersey to furnish *work, labor and materials* and to build a machine, for *its exclusive use*, and this machine (when built) was the *exact machine*, described in the letters patent, so issued to, and so sold by appellant, in his said deed (and particular description of said devices) so executed as aforesaid to the appellee. The Court of Claims appears to have been laboring under the wrong impression, that the appellee's said contract with a builder (said Transit Company) to *furnish work, labor and material*, and to make (through, and by means of said *work, labor and materials*) the very, and *identical* device, described as aforesaid for the *sole and exclusive* use of the government amounted to a *rejection* of appellant's proposal. On the contrary, the appellee by its said contract was enabled to, and it did thereby, enter into the actual physical use, and enjoyment, of the property which it so purchased as aforesaid from appellant.

The contract made with said Pneumatic Transit Company required said company to go upon the premises of the appellee, and thereon (in part) construct, a particularly described machine, for the sole and exclusive use of the appellee; this is not *in law* a contract for the *sale of the machine* (which is the subject of the contract), it is merely a contract to *furnish work, labor and materials*, and to build said machine for the sole use of the appellee.

Van Brunt, J., in *Millar* v. *Fitzgibbons*, 9 Daly, N. Y. 505.

Rec., pp. 30, 31, 32.

An agreement by one to construct an article especially for, or according to, the plans of another, whether at an agreed price, or not, although the transaction is to result in a sale of the article, is a contract for *work, labor and materials.*

Mixer v. *Howarth*, 21 Pick (Mass.) 205.

Said proposed (said deed) *conferred* upon the government *the right* to do an act, which *otherwise* would have been *illegal.* (30 Cyc., pp. 954, 955.) And it follows that as the government had the right *from appellant*, to make and use the device that it could *not* infringe, *nor* could any person employed by the government to make the device for the use of the government (and in part upon its premises where it furnished the steam power) *infringe* said letters patent. At the time the government procured the construction of the machines in question for its use, it had a perfect right so to do, and it had the evidence of that right (being said proposal) in its lawful keeping and possession. And it had the right under said proposal to employ said Pneumatic Transit Company to construct machines for its use, and upon its premises, or elsewhere, within the territory so granted to the appellee, by appellant, as aforesaid. In this respect there was no *tort* committed, or *possible to be committed*, as against appellant. In Schillinger's case (155 U. S. R. 163), mentioned by the Court of Claims, Schillinger *forbade* the use of his invention, and threateend suit, and of course the use of the invention thereafter would be a *tort*, and a suit for *infringement* cannot be maintained *unless* a *tort* has been committed.

There is no sort of analogy between Schillinger's case and the case at bar.

Appellant by executing to appellee the proposal (the deed) in question, *assented* to appellee's request, and thereby (by the execution and delivery to it of said proposal), the appellee obtained from appellant the identical right by it sought, and requested of appellant, and the evidence of that right, and the appellee retains the said right, and the said evidence thereof, and it cannot escape its legal liability to appellant even if it never used the devices in question. It is wholly immaterial so far as the legal liability to the appellant is concerned whether the appellee made use of the rights so granted to it or not.

It will appear upon inspection, that the so-called findings of fact consist, in large measure, of an unfair (unfair to appellant) and half stated, *recital of evidence merely.*

> Findings, II. to VIII, inclusive (Tr. of Rec., pp. 10-34.

Said findings are *not* "a statement of the *ultimate* facts or propositions which the evidence is intended to establish," and therefore they are *not* such findings of fact as are required by this honorable court to be made before conclusion of law is decided and judgment entered.

> *Burr* v. *The Des Moines Railroad and Navigation Company*, 1 Wall. p. 122.

And being a mere recital of the "evidence on which those *ultimate facts* are supposed to rest." Said findings are *not* "a special verdict" (or any verdict),

and without such verdict *first found* the court could not lawfully decide a legal conclusion or lawfully enter judgment thereon.

Same v. *Same.*

Upon reading the evidence so set out as aforesaid, the court will observe that the conclusion of law and judgment thereon were *prematurely* made, and entered, and both are therefore erroneous.

It was not within the lawful power of the Court of Claims to enter judgment *upon the evidence recited*, in its so-called "findings." The *Court of Claims* is by the *law and rules* required to *make findings of fact, from* the *evidence* adduced by the parties. And said court could not lawfully substitute a mere recital of said evidence,—or of a part thereof, in lieu of a finding which said court is solely under the law and rules qualified to, and *required* to make, *before* it was authorized (or lawfully permitted), to decide a conclusion of law and enter judgment. And it follows (as remarked), that the conclusion of law and judgment herein are both in violation of the law and rules, and prematurely made, and the same should be reversed, etc.

The evidence thus in part recited in large measure involved the rights of the parties, and the Court of Claims had no lawful power to decide a conclusion of law, and enter judgment, *before it determined the facts* upon said evidence.

As was *held* by this honorable court in the case of *The United States, Appellant* v. *Societe Anonyme Des Anciens Etablissements Cail, etc.*, hereinbefore *cited.*

> "The rule of this court requires the record on appeal from the Court of Claims to contain *findings* by the court of the *facts* in the case established by the evidence in the nature of a special verdict but *not* the evidence establishing it."

As the Court of Claims did *not* make *findings* of the *facts* in this cause, but in lieu thereof merely *recited evidence*, which should have been considered by said Court of Claims as a *basis*, or foundation for *findings of fact*, it is apparent that said conclusion of law was prematurely decided and said judgment thereon was prematurely entered.

It is clear that the evidence thus set out is in character, of such importance that no valid judgment could be entered without a *previous* and *formal finding* by the court, in respect thereto, and no such findings have been made, at any time. The Court of Claims cannot (by *reciting* matters of *evidence* adduced by the parties, in *lieu of findings of fact*) escape the *duty* (imposed upon said court by law, and the rules of this court) of making *findings of fact, before* it enters judgment. As said conclusion of law was prematurely decided, and as said judgment was *prematurely* entered, they are both erroneous, and appellant respectfully requests that this suggestion shall operate as a formal motion herein on his part to reverse and remand, etc., this cause to the Court of Claims, if such motion is, under the rules and practice of this honorable court necessary or required to be herein made (appellant is not entirely familiar with the rules and practice of this honorable court, and he, therefore, respectfully prays the kindly guidance herein of the court),

and appellant desires to secure in this honorable court *final judgment*. Appellant respectfully submits that it would be error for this honorable court upon appeal to *affirm* a judgment where the record shows, as in this case, that there were no sufficient prior findings of fact, on which to base the conclusion of law, and judgment.

In this cause the *Sovereign* is dealing with its *Subject* (appellant) and in so dealing, it is required (and the Sovereign desires because of its legal duty), to deal *justly* with appellant, and the Sovereign (in the case of *Burr* v. *The Des Moines Railroad and Navigation Co.*, 1 Wall., p. 122, *cited*), has particularly designated, and in law decreed, the exact kind and manner of findings, which shall be found and made by its *Court of Claims*, "in open court" before said court shall have authority to enter judgment, and the Court of Claims, in the case at bar, made no such findings. On the contrary, said Court of Claims, in utter disregard of the express command of the Sovereign, speaking by this honorable court, in the case last above *cited*, made its so-called findings of fact (said *recital of evidence*, merely), and entered judgment by main strength, and as appellant respectfully submits, by the unlawful exercise of despotic power, and *not* because a verdict or "findings of fact" having "the sufficiency, fullness and perspicuity of a special verdict" on which to base its judgment, was before the court. Moreover, the Court of Claims, after the entry of judgment, amended its so-called findings, but said amendments are not designable, in the record herein, and a record which shows a judgment entered without showing

the identical verdict upon which it was originally entered is erroneous. There is nothing left to show upon what the court's ruling was invoked. A valid judgment can only be found upon a sufficient *prior* verdict, *or* upon sufficient *prior findings of fact.*

A valid judgment cannot be entered upon or rest upon *uncertain* findings of fact.

In the case at bar the Court of Claims, by amendment to its findings, erroneously cut away and removed the entire foundation on which it based its judgment, and in so doing, it left upon the record no trace, or indication even, of the original findings on which the conclusion of law and judgment were solely based and entered. A judgment existing upon the record is erroneous, if unsupported by the verdict or findings, upon which it was based. The findings upon which the Court of Claims made its conclusion of law and entered judgment have (by its so-called amendment) *disappeared from the record.* This is *not* a case where a court has *withdrawn* its findings, and thereafter made amended findings "in open court." On the contrary, it is a case where the court has, under the guise of amendment, so changed and intermingled the findings that it is impossible to discover from inspection of the record, upon what state of facts the court made its conclusion of law, and entered judgment in the first instance.

Rec., p. 44.

A judgment not based upon valid findings made by the Court of Claims "in open court," *before* said court enters judgment, is erroneous—being

prematurely entered. Said court can only speak by its record, and having *once* spoken, or made its findings upon the record, it was error for the court to thereafter alter or change its said findings, without *first vacating* said judgment and designating upon the record the particular amendments thereto made. By said so-called amended findings the court erroneously so intermingled and so changed the record that it is impossible for this honorable court to determine from inspection thereof or otherwise what findings were originally made, or what amendments thereto were thereafter made. Valid judgments do not rest upon floating verdicts, nor upon a subsequent change of findings, indiscriminately, and unintelligably made.

Obviously, the sole duty of appellant in this case is a *passive* one, being the duty to *receive*, and the sole duty of the appellee herein (the Sovereign), is an *active* one, being the duty to award *justice*, to the appellant (its Subject). And no omission from this record (if any such there be), or failure on the part of appellant in pressing this suit, or *misprision* (if any) on the part of the officers, or servants of the appellee can, in law or morals, justify the appellee in withholding justice herein.

In early history, is disclosed the almost universal opinion of mankind, that, "Kings ought not to think it enough in their high station, that they are not wicked in the government of their subjects, but to be more than moderately good to them."

> Antiquities of the Jews, Josephus, Vol. I, p. 221, (Book VI).

In our age and country, said opinion is become broad-blown, and is crystallized into affirmative expression, in the Constitution and other laws, *requiring* the sovereign to secure to, and *award justice*, to its subjects upon petition in that behalf, and *this*, without regard to the *ability, or weakness, or inefficiency*, of the subject concerning the matter in hand.

The proposal in question is in its terms *alternative*, and it is well settled law that in such case the appellant was clearly within his legal right in electing to treat the transaction as a bargain and sale, and in demanding the purchase money mentioned in said proposal,—the appellee having failed to elect under the terms of said proposal.

In the case at bar, as was *held* by this honorable court in the case of *The United States, Appellant* v. *Société Anonyme Des Anciens Etablissements Cail*, and *Société Anonyme Des Anciens Etablissements Cail, appellant* v. *The United States*, decided at the October, 1911 Term thereof (April 8, 1912). "The Officers of the Government knew of the invention of appellant and were aware of its great importance, and the purpose to deliberately take property of another without the intention that he should be compensated,—in other words, to do plainly a wrongful act,—cannot be imputed to them without the most convincing proof." Such proof does not exist in the case at bar. On the contrary, the so-called amended findings show that the Postmaster General requested appellant to execute the proposal (the *deed*) in question, to the appellee, and that the Post-

master General, in that respect, acted in accordance with the express command of the statute in such case made and provided.

Finding V., Rec., p. 12.

And the amount of compensation to be paid to appellant was *named in said proposal*, in accordance with the requirements of said advertisement, and in accordance with the special written request, of said Postmaster General, in that behalf made to appellant, in reply to his letter of inquiry, in respect thereto.

Rec., pp. 13-14.

The amount of the principal sum,—the *debt*, to be paid by the appellee, to the appellant, is the amount of compensation (the purchase money), thus named in said proposal (and interest thereon), and *not* some other and indefinite amount to be hereafter ascertained. Finding IV. is a mere list of letters patent, and Finding VIII. contains a list of numerous patents granted to a Mr. Batcheller, long *subsequent* to the granting of the letters patent to appellant, most of said last-mentioned patents (thus listed), are shown to have been granted *after this suit was commenced*.

Rec., pp. 11, 33-34.

Said lists of patents evidently can have no adverse bearing on the right of appellant to recover judgment herein, and this honorable court, in the case of the *Société Anonyme Des Anciens Etablissements Cail* v. *The United States* (last above cited), has expressed its doubt whether the court could

take notice of patents, thus imported into the record, and as this court was in *doubt*, of course, it did *not act*, and if the court would not act upon a patent thus listed, and apparently issued *prior* to the commencement of suit. It will certainly give no adverse consideration to mere lists of letters patent, issued long *after* the commencement of this suit, and during the pendency thereof.

The Constitution of the United States (First Amendment) reserves to the people their *natural right* "to petition the government for the redress of grievances," and the Congress in order to facilitate the consideration of said petitions, organized the Court of Claims, and thus provided means whereby said petitions could be presented *to the government* in a definite and orderly manner through the instrumentality of said court. Accordingly this suit was so commenced by "Petition to the Government" (filed by the claimant in pursuance of his natural right so reserved to him as aforesaid (and as by the government directed) for the "redress of claimant's grievances." In the Court of Claims said cause was pending upon said petition and amended petition and the same was there considered *by the government of the United States* (*then* represented by said Court of Claims) and the appeal allowed and subsequent proceedings invested this honorable court with jurisdiction in the entire premises, and said petition, and all amendments thereto, and supplemental petitions are necessarily here, and now before this court (the government) for determination, in respect to *all* of said several grievances, stated and set forth in said original, and

amended petitions, and all such *further* and *other* grievances as the claimant (appellant) has sustained, and as have been wrongfully inflicted upon him, by the appellee, or by its officers, *since* the commencement of said suit, and of record here made known and stated to *this* honorable court, whether by appellant's assignment of error, or other supplementary petition.

And it follows that the several grievances stated and set forth in appellant's 27th, 28th and 34th assignments of error are properly before this honorable court upon appellant's supplemental petition in respect thereto, as *also* by appeal, and, this is so, notwithstanding the former existence of one such rule as had tendency to restrict the record.

Moreover, said assignments of error were made in accordance with a rule (then in force) and *assigned upon the record*, and under the rules, said assignments of error are part and parcel of said (this) record, and the appellee cannot be allowed on this appeal, to reap or retain the benefit of the several grievances by appellant revealed of record in said assignments of error, and by appellant sustained, and unlawfully, and wickedly inflicted upon him by the appellee, at the hands of its attorney and court.

Under the *then* existing rules, the appellant pursued, in revealing said grievances in his said assignments of error, the only lawful method open to him whereby he *could reveal* to this honorable court the several matters therein complained of, and thereby perform his legal duty in respect thereto, and es-

cape from the charge, and guilt, of *negative misprision.*

Appellant respectfully prays this honorable court to enter all proper orders in this cause and to enter judgment herein as by *nihil dicet* in favor of appellant, and against the appellee, and in accordance with the prayer of appellant's said amended petition in said cause filed, *or* that said judgment be reversed and remanded, *etc.*, with directions to said Court of Claims to enter like judgment for appellant, *etc.*

It is evident that the government cannot render in this cause full, and complete justice, unless the appellant is allowed to state his case, and herein show by said assignment of error (in legal effect, a plea of fraud, to the judgment recovered) or by other supplemental matter, or petition, the wrongs inflicted upon him by appellee *after* said *suit was commenced* as well as the *original cause* of action, or grievance by him stated in his original petition, in the Court of Claims filed.

Appellant because of his profound respect for this honorable court, and because of his like profound respect, for the government of the United States, and for its attorney and solicitor general, and their *now* assistants, in the Department of Justice, refrains from printing in this brief the appellant's said *twenty-seventh, twenty-eighth* and *thirty-fourth assignments* of error, and because appellant considers that *if he* (appellant) should publish herein said last mentioned assignments of error that said publication might be detrimental to the best interests of the government, and might tend to

bring the government into disrepute, and lower it in the esteem of its citizens, (a *positive misprision*).

Appellant, therefore, not only so refrains from publication as aforesaid, but he will herein treat of the matters in said assignments, revealed to this court, with as much consideration, and tenderness, (as the situation, unlawfully created on behalf of the appellee, will permit), in view of the affirmative duty, which appellant owes to this honorable court, being a duty, imposed by law. If any harsh word is found in this brief, it is here, not because of malice, or ill will, entertained by appellant toward any person, living, or dead, but solely because the appellant is otherwise unable to convey to this honorable court necessary information concerning this record and revealed therein, without the use of said word.

Said assignments of error have been *printed by the government*, and they, as so published, form part and parcel, of this record, and they are found at pages 48, 49 and 50 of the printed transcript of record, and Appellant's Exhibit "X A" is shown at pages 51 and 52 and Exhibit "X B" is shown at pages 53 to 62, and said Exhibit "X D" is shown at pages 63, 64 and 65 of said record. Said exhibits are the exhibits referred to in, and made part and parcel of, said several assignments of error (and of this record). In view of the embarrassing situation so unlawfully created by, or on behalf of the appellee, as aforesaid, appellant finds it necessary to, and therefore he requests, and prays, this honorable court to carefully examine appellant's said several assignments of error, so *published by the appellee* as aforesaid, *and said exhibits* therein

referred to, all appearing of record at the pages thereof hereinbefore indicated, and upon such examination to order, and enter judgment, in this cause in this honorable court as by *nihil dicet*, and in favor of the appellant, and against said appellee, as aforesaid in accordance with the prayer of claimant's amended petition herein.

Appellant desires to state, that he feels assured, that no attorney now connected with the Department of Justice had any prior guilty knowledge of, or anything to do with, the commission of the said several unlawful acts, and appellant does not suppose that any attorney now in the employ of the appellee, actively approves of the commission of the several offenses complained of.

The unlawful matters complained of, are dealt with by the statutes of the United States, and they are well known at the common law. *Blackstone* informs us that "The maladministration of an high office, and one in public trust and confidence, is at the common law, punishable by punishment less than death," *and are crimes of misprision* generally denominated contempt.

Vol. 2 Sharswood's Blackstone, pp. 120, 121, Book IV, pp. 121, 123.

Blackstone further declares that the crime of misprision is *divided*, into *positive* misprision, and *negative* misprision.

4 Bla. Com. C. 9.

And it follows, that if appellant knew of the existence, of the several matters revealed to the court in appellant's said twenty-seventh assignment of

error, and if he, so knowing, *failed to reveal* the same to this honorable court, he would by such *failure* be *guilty* of the *crime* of *negative misprision.*

It appears, therefore, that appellant in revealing to this honorable court, the matters set forth in his said *twenty-seventh* assignment of error, performed a public service, and a *legal duty,* and *obligation,* then resting upon him, a duty and obligation which he could not ignore, without being guilty of the *crime of negative misprision.*

Misprision of felony is also the *concealment of a felony,* which a man knows, but never assented to; for, if he assented, this makes him either principal, or accessory, and the punishment of this in a public officer, by the statute Westm. 1, 3, Edw. I, C. 9. is imprisonment for a year and a day; in a common person imprisonment for a less discretionary time.

Sharswoods Blackstone's Com., Vol. 2, p. 120 (Book IV, C. 9).

The matter complained of was and is, an "offense against public justice."

Same, page 127 (C. 10).

No person, having knowledge of the matters aforesaid can *lawfully* remain *silent,* in respect thereto, for we are told that "It is the duty of every good citizen" knowing of such acts, having been committed, to *inform a magistrate* (and *not* to ask for *affirmance* of the matter involved).

1 Bish. Cr. L. § 720.

4 Bla. Com. 119.

1 Russ. Cr. 43.

Appellant could not lawfully remain *silent* knowing of the commission of the matters in question, *nor, can the appellee, lawfully remain silent*, and by so remaining silent, retain the judgment and thereby the full benefit of the several unlawful acts in question.

Sharswoods Black. Com., Vol. 2, p. 120.

The material matters *revealed* to this honorable court, in and by said twenty-seventh assignment of error, are by the *appellee confessed* as being *true*, as appears by inspection of Appellant's Exhibit "X A," being a certified copy of said confession and found at Rec., p. 51, and made a *part* of said *twenty-seventh* assignment of error, found at Rec., p. 48 (margin, p. 65).

And as said matters, are so *confessed* by the appellee, *to be true* appellant submits that, it is the *duty* of the appellee, and, of its attorneys, to promptly and of *record* herein, *confess* in *this* honorable court appellant's said twenty-seventh assignment of error, and this is not a matter of official caprice, or discretion with the appellee, but it is a legal duty resting upon the appellee, and its attorneys, and one which cannot be ignored, or delayed, without an open, and wanton violation of express, and positive law, a condition of affairs not to be considered possible in this honorable court. The unlawful matters in question can be properly considered by the court upon the following motion, that is to say:

MOTION.

And now comes James W. Beach, appellant in the above entitled cause, by James W. Beach, attorney *pro se*, and by James W. Beach, counsel for the appellant, and moves this honorable court because of the several matters and reasons hereinbefore stated and set forth and of record in this cause appearing (and all of which said several matters and reasons including the several matters stated and set forth in said 27th assignment of error—being said 27th assignment of error—are hereby referred to and made a part hereof), to rule, order, direct, and require, said appellee and its attorney general to confess of record herein *instanter* the appellant's said twenty-seventh assignment of error, and that this honorable court upon said confession, enter judgment in this cause in favor of the appellant and against said appellee in accordance with the prayer of appellant's amended petition in said cause filed, and of record herein appearing.

Respectfully submitted.

JAMES W. BEACH, *Appellant.*
By JAMES W. BEACH, *Attorney pro se.*
By JAMES W. BEACH,
Counsel for the Appellant.

And the appellant now and hereby gives notice to said appellee and to its attorney general that he will at the trial hereof, or prior thereto, respectfully insist before this honorable court, that it grant said last mentioned motion, and that in the event that this honorable court shall upon the hearing of

said motion, be of the opinion that said twenty-seventh assignment of error is already and now confessed of record herein, the appellant will then and there request this honorable court to take up and dispose of the following motion, that is to say:

MOTION.

And now comes James W. Beach, appellant in the above entitled cause, by James W. Beach, attorney *pro se*, and by James W. Beach, counsel for the appellant, and moves this honorable court because of the said several matters and reasons hereinbefore stated and of record in this cause appearing, to order and enter *instanter*, judgment herein, upon confession of said appellee of appellant's said twenty-seventh assignment of error of record herein appearing, in favor of said appellant, and against said appellee, in accordance with the prayer of appellant's amended petition in said cause filed.

Respectfully submitted.

JAMES W. BEACH, *Appellant.*

By JAMES W. BEACH, *Attorney pro se.*

By JAMES W. BEACH,

Counsel for the Appellant.

And appellant hereby further gives notice to the appellee, and to its Attorney General, that he will at the time of trial, or prior thereto, move this honorable court for a rule on said appellee to show cause why it should not be found guilty of, and treated herein as being in contempt of this honorable court and of the laws of the land, all because of the matters aforesaid.

Appellant has been unable to find a single reported case where a party has obtained a judgment through the unlawful methods pursued by the appellee in this cause, and has confessed the error (the offense charged), upon the record, and has thereafter *sought, or obtained, affirmance* of the judgment.

Upon appeal, courts do not act as approvers of crime, nor do they knowingly affirm judgments obtained through the Commission of crime. Appellant respectfully submits that the conduct of said appellee's former attorney in the matters aforesaid, was, and it is, *contra bonos mores.*

In this country we are governed by law, and it will be conceded that in a country, governed by law, it is impossible to license crime, or to allow a party to a legal proceeding, to enjoy the fruits of crime by him in said proceeding committed (or by him allowed to be committed), or to in any manner authorize injustice, and have a well founded hope, of preserving the state.

It is *held* by all *civilized* nations (save one) that "It is the paramount duty of the monarch to show respect for its own laws." And it was so affirmatively *held* by the *Aztects,*—a *semi-civilized* people.

> Conquest of Mexico (Prescott), Vol. 1, p. 148.

In the case at bar no respect whatever is shown by the sovereign for its own laws. On the contrary, its laws were wantonly and secretly violated by its *then* attorney, and thereby appellant was upon the trial unlawfully deprived of one deposition, to which

he was lawfully entitled, and upon said trial the appellee was thereby unlawfully given the full benefit of the deposition in question, and thereupon the Court of Claims, *entered judgment for the appellee* —an astounding state of affairs, but one fully revealed and established by the record herein.

A feature of this case which is most embarrassing to the appellant, is the fact that the attorney who committed (as appears by his said confession) said several unlawful acts has departed this life, and by reason of the situation which confronted the appellant, appellant found that he must either violate the law of the land, and thereby be *guilty*, of the *crime* of *negative misprision, or* he must violate the well known charitable maxim, "*De mortuis nil nisi bonum.*" Under these circumstances appellant was, of course, obliged to disregard said maxim. And this he has done, without feeling of malice, and with as much consideration, and gentleness as an incomplete (but necessary) discussion of said matter permits—the *legal* situation is apparent, as it is *held* that "The *essence* of *forgery* consists in making an instrument appear that which it is not."

English Law Reports 100.
Rec., 200, Crown Cases Reserved.

And further it is *held* that "A fraudulent insertion, alteration or erasure of *a letter*, in any material part of the instrument whereby a new operation is given to it will amount to *forgery*.

1 Stro. 18; 1 And. 101.
5 Eps. 100; 5 Stroble 581.

It is *forgery* at common law fraudulently to *falsify* or falsely make records and other matters of a public nature.

1 Rolle Abr. 65, 68.

Forgery may be committed of any writing which, if genuine, would operate as the foundation of another man's liability, or the evidence of his right.

3 Greenl. Ev., Sec. 103.

2 Mass. 397.

And so of a *deposition* to be used in court.

State v. *Kimball*, 50 Maine. R. 409.

And so of a *copy*, of any instrument to be used in evidence, in place of a real or supposed original.

8 Yerg. 150.

Forgery may be of a *printed*, or engraved, as well as of a written instrument.

3 Gray 441.

9 Pick. 312.

It is clear that the libelous, false, and self-serving statements, made by said attorney in his said confession, are of no value to the appellee, and said statements do not even tend to relieve said attorney or the appellee from *legal guilt*. The *legal guilt* remained whatever he may have "thought." "On the trial of an indictment for *making and uttering* a *forged deposition*, to procure a divorce, the *belief*, of the respondent, in the truth of the statements in the deposition, and the fact that his object in forging it, was to procure a divorce to which he *believed* himself legally entitled are no defense, * * *

and the forging of any writing by which a person *might be* prejudiced is forgery at common law."

State v. *Kimball*, 50 Maine R. (Hubbard), Vol. 6, p. 409.

And a judgment entered upon a record containing either *much, or* little, of the virus in question injected into the record *by* the *winning party*, is clearly erroneous.

The court cannot consider the degree, or measure of the offense, or its bearing, but will inquire solely whether any offense was committed, (and said confession *admits* the commission of the offense complained of) and the matter thus admitted by appellee is not now open for disputation, and it follows, that judgment should be entered herein for the appellant and against the appellee upon its said confession of said twenty-seventh assignment of error.

What particular bearing the depositions in question would have had upon the trial if they had remained as they were returned into court by its accredited officers, can not be here, or now, considered. The sole question to be determined by this honorable court in respect to the matters so revealed to this honorable court is *this*, "*Are* the material statements made in said 27th assignment of error *true*." And *the appellee* has stated in and by said *confession* appearing in said 27th assignment of error that said statements *are true*. And thereby the appellee is conclusively debarred herein, as to said 27th assignment of error. Said material statements are by the appellant in said 27th assignment of error alleged and shown to be true, and therein (in said

assignment) appellee *admits* that said statements *are true*, and being true and so admitted said statements are not herein subject to question by the appellee, and said judgment is erroneous and should be reversed, *etc.*, upon confession of the appellee.

The record shows that the application for allowance of appeal was allowed, but the specific reasons in writing presented by appellant for such appeal were by the Court of Claims (in violation of the law and the rules of court, and of the rights of appellant, *erroneously ignored* and "ordered to the files."

See Rec., p. 44, *and* Appellant's Exhibit X D, Rec., pp. 63, 64, 65, 66.

This honorable court will observe, from inspection of this record, (including said order of appeal), that the appellant was at all times during the course of this proceeding alert, and anxious to preserve of record in due time, and form, all of his legal and equitable rights in the premises, both in the court below and upon appeal to this honorable court, and to that end appellant made all necessary objection and reserved all necessary exceptions, in apt time, and manner, and form. And *if* there is any apparent *omission* in respect thereto, from this record, the fault in that regard is clearly and *solely* the fault of appellee, or because of the unlawful omission and negligence of the appellee, and of its officers, and agents.

Of course, appellant had neither the legal right, nor physical power, to enter upon the docket, or other records of the Court of Claims any (or all) such matters and entries, as would fully disclose

and preserve upon said record claimant's said objections, and exceptions aforesaid, made, raised, taken and reserved, during the course of said proceeding in the Court of Claims. Furthermore, appellant in pursuance of his legal right to have his said objections and his said exceptions preserved upon the record (and for use upon this appeal and for all lawful purposes) by the appellee, at the hand of its Court of Claims, prepared and presented to said court for its affirmative approval, upon the record his two certain motions in writing and two written bills of exception (drafts thereof), all duly prepared and presented by appellant to said court and for the purposes aforesaid, and all this, in apt time, manner and form, but the Court of Claims illegally and erroneously ignored one of said motions, and one of said bills of exception, and said court, acting by its chief justice, *ordered* "to the files" said last mentioned motion, and bill of exception, and the same thereby became, was and is, a part and parcel of the record in said (this) cause, and was, and is, in law, required to be produced herein *by the appellee*, or by the clerk or assistant clerk of said court, and duly certified as part and parcel of the record aforesaid. And the appellant makes this statement and suggestion in regard to the absence from the record filed herein, of said motion and bill of exceptions, to the end that the sovereign, acting by this honorable court, will in due time, manner, and form, enter such order in this honorable court, as will result in the proper and timely production herein, as part of this record of said motion, and bill of exceptions, duly certified and to the end that appellant

may upon the trial hereof have the full benefit thereof. And the appellant so now, and here, moves and prays this honorable court, to so order and adjudge, and in such manner, as will fully, and in due time, and form, protect the appellant in the enjoyment of all of his legal and equitable rights in this cause. Appellant here submits and prints a true and correct copy of the material part of one of said motions and of one of said bills of exceptions (last mentioned) together with a like true and correct copy of the *affirmative* action of said Court of Claims (by its chief justice), thereon, said copy being a true and correct copy of a certified copy of said motion and bill of exceptions (and action thereon) last mentioned and being in said material part in the words and figures following, that is to say:

"In the Court of Claims.
December Term, A. D. 1908.

United States of America, District of Columbia. } ss.

James W. Beach, *Claimant*, *vs.* The United States. } No. 21,255. *Motion.*

Now comes the claimant in the above entitled cause by James W. Beach, attorney *pro se*, and again moves the Honorable the Court of Claims, or the Honorable the Chief Justice thereof (as the case may be), to sign and seal the annexed prepared (in writing) bill of exceptions, together with the bill of exceptions heretofore presented by the claimant in said cause.

Respectfully submitted.
By James W. Beach,
Claimant, and Attorney, pro se."

"In the Court of Claims,
"December Term, A. D. 1908.

"UNITED STATES OF AMERICA,
"DISTRICT OF COLUMBIA, } ss.

"James W. Beach, *Claimant*,
vs.
"The United States. } No. 21255
Bill of
Exceptions."

"Be it remembered that at the trial of this cause at the December Term, A. D. 1905, of the said Court of Claims, the claimant in the above entitled cause, to maintain the issues on his part, gave in evidence to the Court of Claims, *etc.*, *etc.* (for the sake of brevity, appellant omits printing in this brief said entire bill of exceptions and only here prints so much thereof as is necessary in order to show part of the objections made by the appellant, and exceptions by him reserved, in said cause during the course of said proceeding). * * * "Which "was all the evidence offered by either of "the said parties. The claimant then and there "moved the court, upon the evidence, to make all "of the findings of fact and the conclusions of law "heretofore requested by the claimant in his printed "request for findings of fact in that behalf made "and filed herein (the clerk will here insert all of "the claimant's said requests for findings of fact "and the said conclusions of law thereon requested "by the claimant, which said request for findings "of fact and said conclusions of law thereon (ex- "cept Finding 1, aforesaid), the court refused to "make, to which said refusal and ruling of the court "the claimant then and there excepted, and there-

"upon the court made the findings and conclusions "of law and entered the judgment made and decided "on January 29, A. D. 1906. (The clerk will here "insert and set out said findings, conclusions of law "and judgment so made and decided as aforesaid, "on said 29th day of January, A. D. 1906, to which "ruling of the court and findings last aforesaid "(except I., II., III., IV. and V.), and to the con- "clusions of law last aforesaid and judgment the "claimant then and there excepted, whereupon the "claimant filed the following motion for a new trial "(here the clerk will insert and set out said motion "for a new trial), and thereafter the claimant filed "his certain motion in said cause for leave to amend "said motion for a new trial and thereafter the "claimant filed in said cause his amended motion "for a new trial (here the clerk will insert said mo- "tion for leave to amend and said amended motion "for a new trial), but the court, by order entered "May 20, 1909, overruled the said motion for a new "trial, to which said ruling of the court and the "order then and there entered in said cause by the "court, the claimant then and there duly excepted; "and inasmuch as all of the matters aforesaid do "not otherwise appear of record, the claimant pre- "sents this bill of exceptions and prays that the "same may be signed and sealed by the court (or "by the Chief Justice of said court), and made part "of the record in said cause, and it is done accord- "ingly.

[SEAL.]

"Filed May 28, 1909. Ordered 'To the files.'
"Stanton J. Peelle, Chief Justice."

"A true copy.

"Test this first day of July, 1909.

"JOHN RANDOLPH,
"*Asst. Clerk Court of Claims.*

"[SEAL OF COURT
" OF CLAIMS.]"

Appellant reserves the right upon the hearing hereof to produce and offer in evidence, under his said right of petition so reserved to him by the Constitution of the United States as aforesaid (and for all lawful purposes herein), a duly certified copy of said last mentioned motion and bill of exceptions so ordered "To the files" as aforesaid (and thereby placed upon and made part of said record by said order of said Chief Justice of said Court of Claims) together with a duly certified copy of said order so made and entered as aforesaid by said Chief Justice.

ARGUMENT.

The property so sold by appellant to appellee as aforesaid, was worth a vast sum of money, but the purchase price designated in said proposal was *Twenty Million Dollars, only,*—being a sum of money then believed to be *less* than *ten per cent.* of the actual value of the property in question.

Rec., p. 17 (top of page).

Time, and use, have demonstrated that *four per cent.* would have been nearer correct than *ten* per cent.

By the Act making appropriations for the service of the Post Office Department for the fiscal year, *ending* June 30, 1912, and for other purposes,—approved March 4, 1911,—there was appropriated

"For the transmission of mail by pneumatic tubes or other similar devices, nine hundred and sixty-six thousand, eight hundred dollars ($966,800.00).

Appropriations, New Offices, etc.

Sixty-first Congress,

Third Session, p. 252.

That is to say, the government paid, during the fiscal year ended June 30, 1912, for the transmission of its mails through the inventions (machines) in question, a sum of money which at two *per cent.* would have paid the interest on *forty-eight million, three hundred and forty thousand dollars* ($48,340,000.00).

In addition to the above-mentioned appropriation, the same Congress (and at the same session) authorized the Postmaster General to advertise for the "construction of double lines of pneumatic tubes, *thirty inches in diameter* and not exceeding one mile in length, in the City of Cincinnati, Ohio, and to enter into contracts for the operation of the same, at a rate of, not exceeding seventeen thousand dollars per mile, *per annum*."

Appropriations, New Offices, etc.
Sixty-first Congress,
Third Session, pp. 483-484.

This record does not disclose so much as one material finding of fact in support of the conclusions of law. Finding VI. (Rec., p. 28), is *immaterial* and it is so *held* by the Court of Claims (Rec., p. 37, 10th line). Findings IX. and X. are both *immaterial* and they do not tend to support the conclusions of law, or judgment thereon, and these three findings are the only ones which purport to be in favor of appellee.

A conclusion of law can only be made, upon *facts ascertained*, and not upon *doubts entertained*.

Said conclusions of law and judgment are not supported by express findings, nor are they supported by the doubts expressed or entertained by the court, and this is so, notwithstanding the matters claimed to be in doubt are wholly immaterial, as in this case.

"A conclusion stated as one of law, *must* be upheld by *express* finding of fact."

Sun Mut. Ins. Co. v. *Ocean Ins. Co.*, 107 U. S. 485.

A verdict in order to authorize a valid judgment thereon must *not* be a mere *recital* of evidence, but it *must find material facts* in favor of *one* of the parties to the suit,—either for the plaintiff, or for the defendant, and valid findings of fact, made by a court, are necessarily findings in favor of either, the appellant, or the appellee, and where (as in this case), certain specified *immaterial* findings purport to be made in favor of the appellee, all other findings not therein specifically stated to be in favor of the appellee, are necessarily in favor of the appellant. In other words, where a court has made certain *named immaterial* findings specifically in favor of *one* party (also named), it follows as a matter of reason and of law, that *all other* findings of fact are intended to be, and are made in favor of the *other* party *not* thus specifically named, and, *if* this were *not* so, it would follow that where (as in this case) the court has in material matters, merely injected into the record a *recital of the evidence* in respect thereto, and has *failed to find* the *ultimate facts* embraced in the evidence thus recited, its conclusions of law (and judgment thereon) are unsupported by the *findings*, and such judgment is prematurely entered.

The Court of Claims should have remembered that a conclusion of law (when lawfully made), is based on *affirmative findings* of material and *ultimate facts*, and that findings of fact cannot be based on, or supported by a conclusion of law, or by a recital of *evidence* offered by the parties.

The Court of Claims in respect to nearly all of the material matters of fact, has erroneously sub-

stituted evidence in this record in lieu of findings of the *ultimate facts* required *by law* and the rules of court.

This honorable court has *held* that, "The court below is bound to find the *ultimate* facts, and not mere incidental facts, amounting only to *evidence*."

Merchants Mut. Ins. Co. v. *Allen*, 121, U. S. 67.

The *ultimate fact* which the Court of Claims was legally bound to determine, was the question of the existence of the contract—indebtedness, declared on, and set forth in claimant's amended petition, (Rec., pp. 1 to 5). This *essential, ultimate fact is not* in the findings.

The findings, which appear in the transcript are merely incidental, amounting only to evidence which would have had a bearing upon said ultimate fact *if* it had been made or found, but as the ultimate fact was not found, said incidental findings are inoperative and are without legal value. The fact that there was a contract, *indebtedness* is the *ultimate fact* alleged in claimant's said petition. There are certain acts and circumstances set out in said petition from which this ultimate fact is deduced, that is, there is in the petition much detail of mere evidenciary facts. The material issue of fact, however, "Is there an indebtedness springing from the deed or contract set forth in claimant's said petition" was not found, and as said ultimate fact has not been determined by a finding in respect thereto, there is no foundation for the judgment.

Samuel Kahn v. *The Central Smelting Company, et al.*, 2 Utah R. 373.

Neither the opinion of the court, nor the evidence, form any part of the findings of fact, although incorporated therein by the court. In looking at the findings the court will only consider the ultimate facts found, and no ultimate fact was found in this cause.

William James et al. v. *Wm. H. Williams et al.*, 31 Cal. 211.

"Findings of the court on a trial without a jury under U. S. Rev. Statutes, Secs. 649 and 700, must be complete as to *essential facts* and form *reversible error* where they are incomplete, or amount to but findings of the evidence."

The E. A. Packer v. *New Jersey Lighterage Co.* (The E. A. Packer), 140 U. S. R. 360.

Whether the Court of Claims had jurisdiction depended, of course, upon the *weight of evidence* in that respect, to be determined by a *finding of fact, prior* to deciding its conclusion of law. The Court of Claims made no such finding. In the absence of a finding of fact, the court erroneously *assumed* that the government had committed a *tort*, but this assumption is not supported by the findings. There is nothing in this record indicating that the government was guilty of a *tort* or of *infringement*, but there is much to the contrary, both in presumption of law and in this record. If a jury had returned into court as its verdict the findings set forth in this record, the court would have declined to receive and enter the alleged verdict, and would have ordered the jury to the jury room to find a *verdict*,

and not a mere *recital of evidence* offered by the parties.

Furthermore, if said alleged verdict had been improvidently received, or by mistake entered of record, the court would have promtly entered judgment thereon (if at all) *for the claimant, non obstante verdicto*, and upon the findings of the Court of Claims, a like or similar judgment should be entered by the court in favor of the appellant herein.

The three findings made by the court which purport to be in favor of the appellee are *immaterial*, and, being immaterial, they do not authorize conclusions of law and judgment in its favor.

Said *recitals* of documentary *evidence* offered by the parties are not *findings* of *ultimate* facts, or of any fact, and it follows that the conclusion of law and judgment thereon is premature and erroneous, not being supported by the *findings*. If all of the recitals of evidence appearing in the record were held to be true findings of fact, the law would require that the conclusions of law thereon and judgment should be in favor of appellant, notwithstanding the three findings above mentioned. No finding of fact whatever is embraced in said (pretended) finding V. It is a *mere recital* (throughout) *of documentary evidence*. The evidence thus recited is of the utmost importance, and a finding of fact thereon was *essential*, but no finding of fact was made, and "A conclusion stated as one of law cannot be upheld except by *express findings* of fact."

Sun Mut. Ins. Co. v. *Ocean Ins. Co.*, 107 U. S. 485.

"Where a special verdict is rendered *all the facts* essential to entitle a party to a judgment *must be found.*" (Not *recited.*)

Ward v. *Cochran*, 150 U. S. 597.

And a verdict is bad, if it varies from the *issue* of a substantial matter, or if it finds only a *part*, of that which is in issue, and in such case, though the court give form to a *general* finding to make it harmonize with the issue, *no judgment* can be rendered on the verdict.

Patterson v. *United States*, 2 Wheat. 221.

The matter which the Court of Claims was required by its findings of fact to determine as the only matter in issue, was whether the claimant *was entitled* to recover, or whether he *was not entitled* to recover on the cause of action in claimant's petition declared on. The Court of Claims made no such *finding* of *fact.*

Of all essential things, the most essential has been thus wholly omitted by the Court of Claims from its findings. The conclusion of law cannot take the place of a necessary *prior finding* as to *which one* of the parties is entitled to recover. The conclusion of law is unsupported by the findings of fact. The Court of Claims has not, *by its findings of fact* determined *whether* the *claimant*, *or* the *defendant* should recover, and in the *absence* of such finding the court's conclusion of law is wholly unsupported by *necessary* findings of fact.

And "The *opinion* of the court below is of course *not* a finding of fact."

Louisiana Mut. Ins. Co. v. *Tweed*, 7 Wall. 44.

In (so-called) Finding VIII is set forth a list of patents which were issued years after appellant had executed his said proposal to appellee, and a similar list is referred to in the opinion. Of course these patents and the conduct of the appellee in respect thereto, can have no adverse legal bearing upon the rights of appellant herein.

Findings IX and X are wholly immaterial, and appellant was, and he is, entitled to judgment, notwithstanding said findings.

If said Findings IX and X had any material bearing upon the right of appellant to recover judgment, it is, in such case, apparent that this judgment was *prematurely* entered. Of course, the Court of Claims, representing, as it did, the Sovereign, could not lawfully enter judgment while in *doubt* as to the matters to be determined by the judgment. Upon the court, by said findings ascertaining that it was in doubt, it was the duty of the court to refrain from entering judgment. And thereupon the court should have made further inquiry, so that the court would be able to enter judgment upon its *knowledge of the facts* and *not* upon the *doubts* which it entertained, and expressed in said findings.

The Court of Claims in all of its acts represented the sovereign, and none other, and it was the *duty of the sovereign* to remove from the mind of its agent (said court) *all doubt* as to the facts, to the

end that *justice* should be secured to its citizen, at the hands of his sovereign, for such was, and is, the manifest *duty* of the sovereign, and is the *sole reason* for its existence.

This cause is wholly unlike a suit between individuals, who are at liberty to come into court and there, "deal with each other at arm's length," and under conditions such that neither party can lawfully claim protection from his adversary.

In this cause the suit is between the sovereign, and its subject, and in such case the sovereign is bound by the elementary, and sole purpose of its existence, to secure justice to its subject, and in the absence of full and complete knowledge of every material fact, the Court of Claims representing the sovereign had no right, whatever, to enter judgment. Whenever the courts, representing the sovereignty, of the United States, shall (if ever) deem themselves clothed with authority to enter a judgment in favor of the sovereign, and against a citizen, without first possessing full and complete knowledge of every material fact, that moment the government of a free people, under a written Constitution, will be supplanted by an absolute monarchy, cruelty administered—a tyranny—

If the evidence adduced did not establish to the satisfaction of the court a certain matter of fact material to a right judgment, it was then the *duty* of the sovereign to make, or to direct the claimant (its subject), to make, further proof.

The sovereign did neither of these preliminary, and sovereign acts, but on the contrary, the sovereign without notice to the subject, that the aid he

had rendered to his sovereign in the matter in suit, was inefficient, or in any manner, or degree, unsatisfactory, the court arbitrarily and peremptorily entered said judgment, upon a state of facts which (according to the court) it had not ascertained, and we are told, that, "He who answerth a matter, before he heareth it, it is folly, and shame unto him."

Proverbs, 18-13.

The sovereign had no lawful power to enter judgment, while it remained in ignorance, or in doubt, concerning any matter of fact, material to a right judgment.

The purpose of the evidence was to bring to the mind of the sovereign, an exact knowledge, of all of the facts, and in the absence of such knowledge the Court of Claims, had no more legal right to enter judgment, than the claimant had legal right to render judgment in said cause.

The efforts made by claimants in the Court of Claims, are made, merely in aid of the sovereign in performing *its duty* to render justice to them, and if in rendering aid to the sovereign the claimant makes mistakes, or if there is omitted from the record, some matters which, would in a suit between individuals, be *fatal* to a recovery, such mistake or omission will, instead of being *fatal* to a recovery, be corrected, or be supplied by the sovereign in apt time, and in pursuance of its duty under the Constitution of the United States.

If the evidence in this cause had been submitted to a jury and the jury had returned into court, its verdict as follows, that is to say, "We the jury are

not satisfied." *Or*, "We the jury are in *doubt*." *Or*, "We the jury *don't know*," the appellant, ventures to assert that even the Court of Claims would have declined to enter judgment upon the "verdict," thus rendered, nevertheless the Court of Claims made its said findings in substance like the supposed "verdict" and promptly entered judgment upon the findings, which alleged findings, upon examination prove to be a statement of the things which the court did *not* know. If the Court of Claims was not satisfied as to the material facts, the fault in that respect is the fault of the government, and it could not lawfully enter judgment against the claimant even if the aid he had so rendered to the government was inefficient. As remarked, the claimant had no notice prior to the entry of said judgment that the aid he had so given to the sovereign was either unsatisfactory or inefficient. Claimant had no opportunity to offer further evidence, and the court erroneously refused to grant a new trial, and therefore it was not legally possible for appellant to offer further or other evidence or produce other witnesses, and the evidence adduced (the record) had been *falsified* by and as hereinbefore explained, and the matters alleged in appellant's *Twenty-Seventh* Assignment of Errors had a direct and material bearing upon the doubt expressed by the court in Findings IX and X.

Rec., p. 48 (margin p. 65).

Findings IX and X, Rec., p. 34.

Before considering further the contract in suit, or the duty of the Court of Claims in respect to deciding its conclusion of law in favor of the appellant,

instead of the appellee, on the findings in question appellant begs leave to say a few words *solely* by way of *preface* or *explanation* to the court, an explanation not found in the printed record, but found in this record in the Court of Claims that is to say. The record in the Court of Claims shows, that the government called appellant to its aid, and requested him to furnish the government with information concerning his said inventions relating to pneumatic transportation of the mails, and that thereupon, the appellant in response to said request for aid, (at his own expense) placed before the government his said inventions, and fully explained the use and operation thereof, and thereupon, the Postmaster General (after he had fully examined said inventions) said to appellant in regard to said inventions, "Mr. Beach, you will be regarded as a benefactor of the human race" and thereafter he assured appellant that "a thousand hands will be extended to you" (appellant). In response to said call for aid, the appellant furnished to the government, information concerning pneumatic transportation, which it could not have obtained from any other person, or from any other source whatever. The Postmaster General and a Postal Commission appointed by him both knew all about appellant's said inventions, they had thoroughly, repeatedly, and separately, examined the patents in question, and said devices had been explained to them by the appellant at the repeated, and urgent request in that behalf of the sovereign, *before* the enactment of the statute under which said advertisement was made, and at a time when the government of the United States did not have in its

entire service, a pneumatic tube as long as this printed page is wide.

Now by reason of a certain *Rule* the matters last above stated do not appear in the printed record herein, but it should be remembered that this remarkable rule, was made by appellant's *debtor, alone* (who in this case is also, the sovereign), manifestly the sovereign has no valid "Rule" for working injustice, or which will operate to defeat justice. So surely as the sovereign *knew* in the Court of Claims, that the matters herein before stated are *true*, so surely, the same sovereign (now embodied in, or represented by this Honorable Court) continues in that knowledge, and now remembers, that said several matters *are true*, and it follows, that, so remembering the government *at this time knows*, that it is indebted to this appellant *solely*, not only for the purchase money and interest in suit, but for *whatever, and all* that has been, and is, accomplished in pneumatic transmission of its mails, and *knows* as aforesaid, that this appellant of *all* men, is *the one man*, who by his said inventions, made pneumatic transportation of its mails possible.

Having said thus much, by way of preface, or explanation to the court, we will, if the court please proceed with the examination of the printed record herein, and of the contract (in suit) disclosed in said record.

It appears of record herein that appellant at the request of the government placed in its hands and power his exceedingly valuable property in full faith, and upon *credit*, not doubting but what it

would pay him therefor. And no reason is apparent of record, why, he should not be paid.

Rec., pp. 12, 14.

Section 3965, chapter 9, U. S. Revised Statutes (p. 773) provides as follows:

"The Postmaster General shall provide for carrying the mails, on all post roads established by law, as often as he, having due regard to productiveness and other circumstances may think proper."

The *means* to be employed in said "carrying the mails" is by the statute left entirely within the discretion of the Postmaster General. Under the statute he was authorized to employ *any* means, or method of "carrying the mails."

An act making appropriations for the service of the Postoffice Department for the fiscal year ending June 30, 1893, provides as follows:

SECTION 6. "The Postmaster General is hereby authorized and directed to examine into the subject of a more rapid dispatch of mail matter between large cities and postoffice stations and transportation terminals located in large cities, by means of pneumatic tubes or other systems, and make report upon the expense, cost, and advantages of said systems, when applied to the mail service of the United States, and the sum of $10,000 is hereby appropriated therefor, *approved* July 13, 1892.

Vol. 27 U. S. Statutes at Large, p. 148.

Twelve days after said act was approved, the Postmaster General published the advertisement in question in this suit, which said advertisement is

dated as follows, that is to say Washington, D. C., July 26, 1892, and is signed, John Wanamaker, Postmaster General.

Rec., p. 12.

In respect to said advertisement and in order to obtain a proper, and authoritative construction thereof, on August 20, 1892 appellant wrote to the Postmaster General the following letter, that is to say:

"CHICAGO, Aug. 20th, 1892.

Hon. John Wanamaker, Postmaster General,
Washington, D. C.

DEAR SIR: I, the undersigned desire to submit to the Postmaster General a description of a pneumatic tube or device (of which I am the *inventor and owner*), suitable for and adapted to the rapid dispatch of mail matter between large cities and post-office stations and transportation terminals located in large cities, and I also desire to accompany said description with a 'proposal, offering to license to or otherwise invest in the United States the right to use, the tube, or device, to lease by the year or to sell, assign, and transfer it to the United States as a purchaser', pursuant to your advertisement dated July 26th, 1892, entitled 'mail service by pneumatic tubes or other systems.'

I am unable to determine from said advertisement whether the Postmaster General requires under said advertisement that said proposal shall *fix or name a price* at which the owner will so *license, lease, or sell, assign and transfer to the United States* the right to use the device. In accordance with the sug-

gestion of Mr. Michener (whose letter I enclose herewith) I respectfully request that the Postmaster General will kindly inform me at an early day, what interpretation I shall put upon said advertisement with reference to the point now being considered, that is to say, whether my said proposal *should, or should* not, name a *price* at which I, as the owner aforesaid, will so license, lease, or sell, assign and transfer to the United States the right to use said tube or device.

I remain very respectfully yours,

JAMES W. BEACH."

Rec., p. 13.

In reply to said letter of appellant the Postmaster General wrote to appellant the following letter:

"PRIVATE OFFICE OF JOHN WANAMAKER
CITY HALL SQUARE

PHILADELPHIA, Aug. 23d, 1892.

James W. Beach, Esq., Chicago, Ill.

DEAR SIR: In reply to your letter of the 20th I beg to say that the advertisement for pneumatic tubes states, each offer shall be accompanied by proposals to license to or otherwise invest in the United States, the right to use the tube or device, to *lease by the year, or to sell, assign, or transfer to the United States*, such proposals *must* of course, *fix some price* to be of any *value*.

Yours truly,

JOHN WANAMAKER,
Postmaster General."

It is evident from inspection of this correspondence that the Postmaster General and the appellant

both considered the matter in hand as serious business, and one out of which a contract would spring, and it appears from inspection of said letter from the Postmaster General that he in his official zeal (and in accordance with his well known business instinct) desired to secure for the United States, from this appellant *a thing of value* in response to his said advertisement, and accordingly the Postmaster General in his said letter clearly indicated that the thing of value desired, was a proposal executed by appellant to the appellee, and one fixing a *price* for the property in question herein—a property by him highly valued.

Rec., pp. 13 and 14.

Said advertisement requested all persons who are the *inventors*, assignees or otherwise owners of any pneumatic tube or other device suitable for and adopted to said service to present in *writing under seal* said proposal, on or before, etc.

Rec., p. 12.

It may be well to remark that so far as this record shows, appellant was the *only person* who complied with the terms of said advertisement and executed a proposal, "*in writing under seal.*"

Rec., pp. 28 and 29.

On the 30th day of August, 1892 *appellant, assented to the request of the government by said advertisement made*, and in response thereto, and in compliance with its said request executed and delivered to it in writing under his hand and *seal* (in the presence of two witnesses) the proposal in ques-

tion and therein, and thereby, *fixed a price* for said property, as requested, by the appellee in that behalf.

Rec., pp. 14, 15 and 16.

With said proposal, and annexed thereto, appellant submitted a letter dated Chicago, September 1, 1892, in which he stated among other things "It occurs to me that the amount (purchase price) named is *not a tithe* of the actual value of said inventions."

Rec., p. 17.

With said proposal appellant submitted a particular description of the devices in question, *etc.* in full and complete compliance with the terms of said advertisement.

Rec., pp. 16 to 25, inclusive.

And the Court of Claims finds that,

"The description which accompanied claimant's proposal of August 30, 1892, was identical in substance with the foregoing description of the Beach Pneumatic Conveyor Company."

Rec., p. 25.

Said proposal so executed as aforesaid by appellant was by him on the 1st day of September, 1892 delivered to the government at Chicago, in the State of Illinois, and by registered mail forwarded to the Postmaster General, properly addressed (to him) and inscribed, together with said particular description of said devices, estimate of cost of construction, *etc.*, all in accordance with the requirements of said advertisement.

Rec., p. 26.

On September 9, 1892, the Postmaster General wrote a letter of invitation to appellant as follows:

"OFFICE OF THE POSTMASTER GENERAL.

WASHINGTON, D. C., Sept. 9th, 1892.

SIR: You are invited to be present in person or by representative on Wednesday, September 14th, 1892, at 12 o'clock, noon in the office of the Postmaster General, at the public reading of the propositions under advertisement of July 26, 1892, in regard to pneumatic service.

Very respectfully,

JOHN WANAMAKER,
Postmaster General.

Mr. James W. Beach, 94 Washington street, Room 37, Chicago, Ill."

Rec., p. 26.

To which letter of invitation appellant replied by telegram of acceptance.

Rec., p. 26.

The Court of Claims (in the third line of finding VII), states: "That September 15, 1892 the Postmaster General appointed a commission, of three expert postal officials, as required by the first above mentioned said appropriation act, to examine into the merits of the pneumatic tubes and other system so advetised for; and that commission, reported to the Postmaster General, on September 29, 1892 as follows, etc.:"

Section 3944, United States Revised Statutes (1878) p. 765, directs that, "Proposals for carrying the mail shall be delivered sealed and so kept until

the bidding is closed, and shall then be opened and marked in the presence of the Postmaster General, and one of the assistant postmasters general, or of any other two officers of the department to be designated by the Postmaster General, and any bidder may withdraw his bid at any time *before* twenty-four hours previous to the time fixed for the opening of proposals by serving upon the Postmaster General, or the second assistant postmasters general notice in writing of such withdrawal."

The *imaginary statute*, "*cited*" by the Court of Claims, has not repealed, the then existing statute, concerning the manner of opening proposals as above quoted in full, and in accordance with the statutes of the United States, said proposals were opened in the presence of the Postmaster General, and Assistant Postmaster General, J. Lowrie Bell, A. D. Hazen and James Maynard, these were appointed a committee, and made their report in writing, and in said report concerning said proposals consideration was given to *appellant's proposal*. (Rec., p. 29.) And said report among other things states that,

"The committee desire as well to *emphasize* that, in making recommendation that an *arrangement* be made with the Pneumatic Transit Company of New Jersey, for the construction of an experimental line in Philadelphia, it does *not* wish to be understood as passing upon the merits of the system itself, that being a matter for consideration hereafter; in like manner, *as it will be our purpose to give consideration to each one of the systems that have been submitted*.

Rec., p. 30.

And thus the government indicated its express purpose to give further consideration to each one of the systems that had been submitted; this expressed purpose was an act of government, by its chief executive officers in that behalf appointed, and it follows that the statement of the court in its opinion "that as between the plaintiff and the defendants the findings show continual antagonism from the time of said report, must be (and it is) *untrue, because* the government was keeping said proposal *in fact*, and was expressly *keeping it open* and was keeping it as a "*thing of value*" obtained from the appellant *on credit*, and with *the consent* of appellant—this does *not* show *antagonism*, but it shows *entire concurrence*. And the letting of the contract to the Pneumatic Transit Company of New Jersey was *not* a *rejection* of the proposal so *expressly reserved from* rejection by the government, and it follows that the opinion of the Court of Claims is without support either in fact, in law or in reason.

In view of the correspondence had and the proposal and description of the inventions submitted by appellant, the suggestion made by the Court of Claims in its opinion (Rec., p. 37) that the chief executive officer, charged by law with a duty in respect to the matters under consideration, did not know what he wanted, seems ungracious and emphatically untrue. This record shows that the Postmaster General knew *exactly* what he wanted, *namely*, he wanted (in accordance with said advertisement) a proposal executed under the *hand and seal* of appellant (thereby making the proposal an

irrevocable deed), and he also wanted the appellant in and by said proposal to *fix a price* (for he so stated to appellant) for the very property with which he was familiar, being the property which appellant had informed him he desired to offer in a proposal by him intended to be made, in response to said advertisement. It was enough for the Postmaster General to know what he wanted, and that he possessed said knowledge is clearly apparent from inspection of this record. And his judgment as to what he wanted is not subject to revision or disputation in the Court of Claims. The government received from appellant that which it requested of him. Why should it not pay the purchase money by him named at the request of the government?

At the time said proposal was so executed and delivered as aforesaid, the *statute* required that:

"The Postmaster General shall have recorded, in a book to be kept for that purpose, a true and faithful abstract of all proposals made to him for carrying the mails, giving the name of the party offering, the terms of the offer, the sum to be paid, and the time the contract is to continue. *And he shall put on file and preserve the originals of all such proposals.*"

Section 3948, United States Revised Statutes.

When, therefore, appellant executed and delivered to appellee his said *deed*, the appellee *then intended to accept it* and *keep it*, for such was the express *command* of the *statute*, and accordingly the appellee has received, accepted, kept and retained

(and yet retains) said *irrevocable deed*, so executed and delivered to it by appellant as aforesaid, and this it has done, with the *consent* and approval of appellant. It is clear upon inspection of this record that the appellee requested the appellant to execute and deliver to appellee the instrument in question, and it is also clear that the *appellant assented* to its said request, and that the appellee *then* intended to *accept and keep* said instrument in its exclusive possession—for such was the law concerning its intention. Thus it appears of record herein that the government secured and retains, *from appellant*, and with his *consent*, precisely the instrument and property it so requested of him, and it merely neglects to pay the purchase money by him named in said instrument at the express procurement of the government in that behalf.

The Postmaster General was required by said statute to advertise for proposals from the inventors and owners of pneumatic tubes or devices in question, and to obtain a deed therefor from the owners, and he was also required by a former statute (Sec. 3948, U. S. Revised Statutes), then in force, to *keep* said deed whenever it came into possession of the appellee, and accordingly he so advertised, obtained, kept and keeps said deed, so executed to the appellee by appellant as aforesaid, and with the consent in that behalf of appellant.

As stated, Section 3965 of U. S. Revised Statutes provides as follows:

"The Postmaster General is required to provide for carrying the mail on all post roads established by law as often as he, having due regard to pro

ductiveness and other circumstances, may think proper."

And thus the time and method of carrying the mails was by statute placed *solely* within the discretion of said executive officer, and if he so willed, he could lawfully provide for carrying the mails, as letters were carried in the time of Ahasuerus, or as in the time of the Romans, or as messages were conveyed in the time of the Aztecs, or, as he *did actually* provide, *by purchase* of the inventions of appellant.

No person can doubt but what the Postmaster General could (under said statute) have lawfully purchased, or hired, a horse and cart for "carrying the mails," and if he, in his discretion, under the law, could purchase these, then he had power and authority to make a lawful contract for the purchase of any mechanical device (or improved method) to be used for the purpose of "carrying the mails," and accordingly under the said several statutes of the United States, he so contracted with appellant on behalf of the appellee, and the appellee should pay the purchase money which appellant named in the deed *at the express request of appellee.*

The Court of Claims in its opinion at Rec., p. 38, seems to convey the impression that the Act of Congress approved April 21, 1902, was the *first* statute enacted by the Congress expressly authorizing the transportation of mail by pneumatic tubes. This impression is a mistaken one. No less than *seven statutes* relating to pneumatic transportation were enacted *before* the enactment of the statute singled

out by the court as an alleged reason for not paying appellant, and *four* of these seven statutes are appropriations of money in *express terms*, "For transportation of mail by pneumatic tube or other similar devices *by purchase or otherwise*," and two of said statutes appropriate money for *steam power, repairs to plants* and *operating* of pneumatic tubes.

By the statute approved June 9, 1896, the Postmaster General was authorized to use (from the sum of one million dollars thereby appropriated for mail messenger service) the sum of thirty-five thousand dollars, in the transportation of mail *by pneumatic tube* or other similar devices.

U. S. Statutes at Large, Vol. 29, p. 315.

By the act approved March 3, 1897, there was appropriated "For mail messenger service one million dollars, and the Postmaster General may in his discretion use not exceeding the sum of *one hundred and fifty thousand dollars* of this amount in the transportation of mail by *pneumatic tube* or other similar devices, *by purchase or otherwise*."

U. S. Statutes at Large, Vol. 29, p. 646.

By the act approved June 13, 1898, there was appropriated "For transportation of mail by *pneumatic tube* or other similar devices, *by purchase* or otherwise, *two hundred and twenty-five thousand* dollars. *Provided*, that no part of this appropriation shall be used in extending such pneumatic service *beyond the service for which contracts already are entered into*, and no *additional contracts* shall be made unless hereafter authorized by law."

U. S. Statutes at Large, Vol. 30, p. 442.

By the above mentioned statutes the Congress recognized the fact that *contracts* (including the contract in question) had been entered into, and were outstanding, and so appropriated money in respect thereto as aforesaid.

By the act approved March 1, 1899, the Congress appropriated money as follows: "For transportation of mail by *pneumatic tube* or other similar devices, *by purchase or otherwise, two hundred and twenty-five thousand dollars.*"

U. S. Statutes at Large, Vol. 30, p. 963.

By the act approved June 2, 1900, the Congress appropriated money: "For *transportation* of mail by pneumatic tubes of other similar devices, *by purchase or otherwise, two hundred and twenty-five thousand dollars.* Providing that no part of this appropriation shall be used in extending such pneumatic service *beyond the service for which contracts already are entered* into, and no *additional contracts* shall be made unless hereafter authorized by law."

U. S. Statutes at Large, Vol. 31, p. 258.

By act approved July 1, 1898, the Congress appropriated money as follows: "For *supplying necessary power and repairs to plants for operating pneumatic tubes for the transmission of mail matter*, court house and postoffice buildings, Philadelphia, Pennsylvania, New York City and Brooklyn, New York, and the postoffice and subtreasury building, Boston, Massachusetts, twenty thousand dollars.

Boiler and other appurtenances, *pneumatic tube*

system, postoffice and subtreasury building, Boston, Massachusetts. For the installation of one boiler and necessary appurtenances thereto in the postoffice and subtreasury building, Boston, Massachusetts, for the *operation of pneumatic tubes for the transmission of mail matter*, five thousand dollars."

U. S. Statutes at Large, Vol. 30, p. 615.

By the act approved March 3, 1899, money was appropriated: "For *supplying* necessary *power* and *repairs to power plants, for operating pneumatic tubes for the transmission of mail matter*, court house and postoffice buildings, Philadelphia, Pennsylvania, New York City and Brooklyn, New York, and the postoffice and subtreasury building, Boston, Massachusetts, twenty thousand dollars."

U. S. Statutes at Large, Vol. 30, p. 1092.

From the situation as disclosed by said several statutes, and by the acts of the parties thereunder, it is apparent that the Court of Claims erred in stating in its opinion (Rec., p. 40) that the United States "manufactured *nothing*." They acquired nothing substantial from plaintiff by the submission of his original letters patent, and they declined to act on any of his proposals. True it is (as remarked by the Court of Claims) that the United States did *not* "manufacture *nothing*." And it is also true that it *did* manufacture *something*, and that something was the thing it wanted appellant to submit in his said proposal, at a price therein fixed, as property under a license or sale thereof. In this manufacture it did not with its own hands place the pneumatic pipe, and build the machinery,

it has no *physical* being, but it proceeded in its usual course, and employed (as we have seen under the authorities) the Pneumatic Transit Co. of New Jersey to furnish *work, labor and materials* for, and to *build the devices* in part upon its (the appellee's) own premises and for *its sole use and benefit*, and said statutes show that the government was *supplying the necessary power* and paying for the *repairs to the plant* and was *operating the pneumatic tubes for the transmission of the mails*, and paying therefor, and while it was doing these several acts with the *consent* of appellant, it *held under the statute* appellant's irrevocable *license* (if you please) or *deed*, authorizing it to do the very things in question (and the thing which it did do as aforesaid). And thus it appears that the appellee *did* acquire *something substantial* from the plaintiff, because it then had said proposal in its lawful and perpetual custody, and possession, and we are told that "No particular form of words is necessary to create an express license. Anything which confers upon another the *right* to do an act, which *otherwise would be illegal, is sufficient to create said license.*"

30 Cyc., pp. 954, 955.

And certainly the instrument so executed and delivered by appellant to the appellee conferred upon the appellee the *right to do* an act which *otherwise* would have been *illegal.*

And we are also told that, "The rights conveyed by a license must be taken subject to the conditions therein made by the licensor. The licensee *has, however, the right to do those things which are nec-*

essary to the enjoyment of his license, such as to make *a machine* which he has been licensed to use."

30 Cyc. 957.

And it is a maxim of the common law that any person granting a thing (as by license) impliedly grants that without which the thing expressly granted would be useless.

Steam Stone Cutter Co. v. *Shortsleeves*, 16 Batch. 382.

Walker on Patents 8296.

And in this action to recover the purchase money, it is not necessary for the patentee (appellant), to prove that the devices made conformed to the claims of the patent.

Clifford v. *Capell*, 165 Fed. 193.

And findings IX and X are wholly immaterial. They have not the slightest adverse bearing upon the right of the appellant to recover herein. And if said findings IX and X were true, appellant would be entitled in law to recover the amount of the debt in question. *Manifestly*, if appellee did *not use* the property sold to it by appellant, appellee could not by its negligence, or failure to use the property purchased, deprive appellant of the right to recover the consideration to be paid therefor.

"The defense that the United States has not used the patent is not available in a suit for royalties due under a contract."

United States v. *Harvey Steel Co.*, 196 U. S. 310.

"And the alleged invalidity of the patent cannot be set up by the United States as a defense to a suit for the royalties due under a contract."

United States v. *Harvey Steel Co.*, 196 U. S. 310.

"Royalty" ordinarily means a specific sum paid annually, or at other stated periods, for the right to use a patented device, whether it is used *much or little or not at all.*

Western Union v. *Am. Bell*, 125 Fed. 342.
The Fixed Law of Patents, p. 818.

The amount of royalty to which the licensor is entitled is the amount which has been fixed in the license agreement.

3 Cus. 324.

In the case at bar the amount to be paid was fixed in said agreement, at the express procurement in that behalf of the appellee.

Rec., p. 14.

It being apparent from the authorities that the appellee cannot refuse payment on the ground of *invalidity* of the patent, or of the *non-use* by appellee of the inventions, it follows as a matter of law that said findings IX and X are *immaterial*, and they do not authorize or support the conclusion of law and judgment herein.

Furthermore, said finding IX is immaterial because in this case there was neither fraud nor warranty on the part of appellant, and we are assured by the authorities that "In the *absence* of fraud or warranty, the assignee of a patent right cannot re-

fuse to make the payments agreed upon, even if the patent is found to be invalid."

Eclipse Bicycle Co. v. *Farrow*, 199 U. S. 581.

Wilson v. *Sampson*, 9 How. 109, 13 L. Ed. 66.

Milligan Lalance, etc., Mfg. Co., 21 Fed. 570.

Finding IX, therefore, is wholly immaterial, and does not authorize or support the conclusion of law and judgment thereon.

And the appellee could not refuse payment, even the patent infringed another device.

Snyder v. *Kurtz*, 61 Iowa 593.

Groff v. *Hansel*, 33 Md. 161.

Clough v. *Patrick*, 37 Vt. 421.

Cragin v. *Fowler*, 34 Vt. 421.

The patents in question have not been found to be either invalid or infringements, and the title thereto conveyed by appellant to the appellee (at its request) has not failed, or been questioned in any proceeding instituted in any court to cancel or annul the patents or either of them, or otherwise, and it is only by *suit*, instituted by the government, that the United States courts can annul or cancel a patent.

United States v. *American Bell Telephone Co.*, 128 U. S. 315.

Mowry v. *Whitney*, 14 Wall (U. S.) 434.

As said patents were not canceled or annulled, they remain valid, and subsisting letters patent and their mere production raise the *presumption of law*

that the appellant was the *first and original inventor*. And the *burden* was upon the appellee to show the *contrary* and to "prove it beyond a reasonable doubt."

Lewis v. *Cronemeyer*, 29 App. Cas. (D. C.) 174.

Gaylor v. *Wilder*, 10 How. U. S. 477.

Smith v. *Goodyear Dental Vulcanite Co.*, 93 U. S. 486.

Until this presumption of law should be overcome "beyond a reasonable doubt" by evidence offered by appellee, said presumption remained precisely as if unattacked by evidence.

At the conclusion of appellee's evidence said presumption of law either prevailed, as a valid and forceful presumption of law, *or* it was by evidence to the contrary entirely overcome. There was in law no middle ground for the court to stand on in making its finding IX. Said presumption either *then* prevailed and subsisted, or it was *non*-existing, a thing of the past. And on the evidence submitted, and the presumption of law aforesaid, it was the duty of the Court of Claims (if it was not satisfied by the *evidence* as it states in finding IX) to have maintained in its said finding the robust and then existing presumption of law, which had *not* been *overcome* by evidence. And the court *erred in law*, in that the court should have therein found that the appellant *was* the *first* inventor of the devices in question.

A valid judgment can only be entered upon *facts ascertained*, but *cannot* be entered upon *doubts entertained*. And when there is a *doubt* concerning a matter of fact, the *presumption of law must* prevail.

If the findings of the court below are not special findings of fact, then and in such event the conclusions of law are erroneous, and the judgment falls, being unsupported by the findings.

If said so-called findings, or if any material one of them, is not in truth a finding of fact (but is a mere recital of evidence bearing upon a fact), then and in such event the conclusions of law and judgment are erroneous because unsupported by necessary findings.

If the findings for appellee are immaterial, the conclusions of law and judgment are erroneous.

If said findings are special findings required by law, then the question thereon is, whether they required conclusions of law and judgment for the appellant, or for the appellee, and this is a matter of *law*, the ruling of which can be reviewed by this Honorable Court.

Norris v. *Jackson*, 9 Wall. 125.
Retzer v. *Wood*, 109 U. S. 188.

So-called finding V is a mere recital throughout of documentary evidence. No fact whatever is found in respect to said evidence. It is *solely and only a recital of evidence* and a finding thereon is essential, and in the absence of such finding the conclusion of law is unsupported by the necessary findings, and both the conclusion of law and judgment thereon are erroneous.

All of the facts essential to entitle a party to a judgment must be found. And such findings of fact are *entirely absent* from this record.

The sole matter in issue in the Court of Claims, to be by it determined by *findings of fact*, was the question whether the claimant (appellant) was entitled to recover on the deed or contract in claimant's said petition declared on? The Court of Claims made no such finding of fact, *nor* did said court *find* that claimant was *not* entitled to recover thereon. The all important finding and the sole one in issue determining *which one of the parties prevailed*, is wholly *omitted* from the findings. A valid conclusion of law cannot be lawfully based on a guess; it can only be based upon a finding of fact that *one* of the parties *is*, or *is not*, entitled to recover. And no such finding was made, or is in this record.

The *conclusion of law* decided by the Court of Claims *cannot* supply that *essential* and *omitted finding*. And it follows that the conclusion of law is unsupported by findings of fact essential to deciding such conclusion, and both the conclusion and judgment thereon are erroneous.

All the facts essential, to entitle a party to a judgment must be found.

Ward v. *Cochran*, 150 U. S. 597.

And the Court of Claims in this cause did not *by its findings* determine which one of the parties was entitled to relief, or which one of them won this suit.

True it is that the *conclusion of law* indicates the victor. But this conclusion of law is erroneous because it is *not* based upon a *prior finding of fact* in that behalf. There must be a finding of *ultimate*

fact before a valid conclusion of law is decided, and no such finding of fact appears in this case.

Neither the opinion of the court nor the evidence form any part of the findings of fact, although incorporated therein by the court. In looking at the findings the court will only consider the *ultimate* facts found (and in the case at bar no ultimate fact was found).

> *William James et al.* v. *Wm. H. Williams et al.*, 31 Cal. R. 211.

"Findings of the court on a trial without a jury under U. S. Revised Statutes, Secs. 649 and 700, must be complete as to essential facts and form reversible error where they are incomplete or amount to but findings of the evidence."

> *The E. A. Packer* v. *New Jersey Lighterage Co.* (The E. A. Packer), 140 U. S. R. 360.

The *ultimate fact* which the Court of Claims was legally bound to find *before* it could decide its conclusion of law thereon was not found. The findings which appear in the Transcript of Record are merely incidental, and being incidental (and *not ultimate*), they are without legal value. The fact that there was a contract indebtedness on the part of the defendant (appellee) is the *ultimate* fact alleged in claimant's said petition. There are certain acts and circumstances set out in said petition, and there is in the petition much detail of mere evidenciary facts. The material issue of fact, however, namely, "Was there an indebtedness on the part of the defendant (appellee) springing from the deed or contract set forth in claimant's said petition?"

was not found by the court. And as such *ultimate fact* has *not* been determined by a *finding* in respect thereto, it follows that there is no foundation for the judgment herein.

Samuel Kahn v. *The Central Smelting Company et al.*, 2 Utah R. 373.

There is no finding of fact that the appellee committed a *tort* or infringed upon the letters patent in question, but the Court of Claims closed its eyes to the record. It made no finding that a *tort* had been committed by the appellee, or that the appellee was guilty of infringement, and then gravely proceeded to the discussion of a matter not in the case, and not in the findings of fact. If the Court of Claims had considered the claimant's peittion the court would have discovered that this action is *not* founded in *tort* and that it is *not* an action to recover *damages* for *infringement*.

The discussion of the Court of Claims in so far as it relates to questions of *tort* and *infringement* has no foundation whatever in the record—neither in the allegations of the petition, nor in the findings of fact, or elsewhere. This action is founded upon a *contract* and is for the recovery of a *debt*, *i. e.*, a *liquidated* or certain sum of money, being the money mentioned in the deed (instrument under seal) described in claimant's said petition.

And this cause is *not* an action to recover damages for *infringement* or for a *tort*. The Court of Claims in the case of *United States* v. *Palmer*, 128 U. S. R. 268, were instructed by this Honorable Court and informed of the difference between actions

on contracts and actions founded in *tort*, as follows, that is to say, this court *held* that "The principal objection raised on the part of the government against the judgment are to the jurisdiction of the court, and the form of action. It is *assumed* that the ground of complaint on which the petition is founded is a *tort* and not a contract; that the assertion in the petition of an implied contract is not warranted by the facts of the case, and that the government cannot be sued in the Court of Claims for a mere *tort*. This *assumption* of the appellant is *erroneous*. No *tort* was committed or claimed to have been committed. The government used the claimant's improvements, *with his consent*, and certainly, with the expectation on his part of recovering a reasonable compensation for the license. This is not a claim for infringement, but a claim for compensation, for an authorized act—two things totally distinct in law, as distinct as trespass on lands is from use and occupation under a lease."

United States v. *Palmer*, 128 U. S. 268.

The jurisdiction of the Court of Claims depended *solely* upon the *weight* of the *evidence* offered by the parties. And the weight of evidence could only be ascertained and determined through a *finding of fact* in that respect. There is no finding of fact in this record that the Court of Claims either has or that it has not jurisdiction. Nor is there a finding of fact that the appellee was guilty of the commission of a *tort* or of an infringement of letters patent. The Court of Claims merely in its opinion wrongfully assumed that the government was guilty,

but this assumption has no basis in the findings of fact. And the elementary *presumption* of *law* is to the contrary. As hereinbefore stated, the statutes required the Postmaster General to "provide for carrying the mails," thus leaving the time and manner of so "carrying the mails" entirely within his discretion.

This discretion has been exercised from the beginning of the Postal Service, and always in the direction of *celerity* and safety of transportation, and as new and improved methods of transportation of the mails have become available, they have been adopted by the government, and in most instances through said official discretion lodged by the statutes in the Postmaster General.

It is proper to here remark that the entire Postal Service of the United States, (now the greatest business in the world,) is based upon *seven* words appearing in the Constitution—being "Power," * * * "To Establish Post Offices and Post Roads."

On July 26, 1892, the Postmaster General, pursuant to act of Congress approved July 13, 1892 (hereinbefore set out), Vol. 27, U. S. Stat., p. 148, published the advertisement in question, and thereby requested appellant (he being one of the persons referred to and in said advertisement mentioned as inventor and owner aforesaid) to present a full description of such tube or device and a proposal offering to *license to* or *otherwise* invest in the United States the right to *use* the tube or device, or to *sell*, assign and transfer it to the United States *as a purchaser*. The foregoing is in substance the re-

quest which was made to and of appellant by the appellee, under authority of law. And thereupon *appellant assented* to said request and executed and delivered to the appellee in accordance with its said request, the proposal in question. And there was in fact (and also under the statute requiring said proposal to be preserved and retained) entire *concurrence* on the part of the appellee. And *a request, assent and concurrence* complete a contract as fully as an offer and acceptance. Thus it is said that there must be a *request* on one side and an *assent* on the other in every contract.

5 Bingh. N. C. 75.

Express assent is that which is openly declared. Implied assent is that which is *presumed by law*.

In brief, the government made the request of appellant, and the *appellant assented* thereto, and entire concurrence therein by both parties is shown by this record, and also conclusively shown under said statute. And thereupon the said request, assent and concurrence became the valid and subsisting contract now in suit.

The evidence of the contract being the advertisement and proposal were both in writing (or printed), and were duly signed. And where a party accepts and adopts a written contract, even though it is not signed by him, he shall be deemed to have assented to its terms and conditions and to be bound by them.

Forthman v. *Deters*, 206 Ills. R. 159.

The proposal in question was, and is, kept and retained by the appellee under its said statute (Sec-

tion 3948 of U. S. Revised Statutes). And it follows that appellant had *notice by law* of said acceptance of his said proposal, and notice of acceptance to appellant from the Postmaster General was entirely unnecessary. And if such notice had been necessary, appellee could not escape its legal liability to appellant by failure to perform its duty in that behalf.

As an offer can only be made by communication from the offerer to to the offeree, so it can only be revoked in the same manner.

Langd., Contr., 180.

And no such communication (of revocation) was at any time made.

Said proposal, as requested by said advertisement, was in the *alternative*, the first proposition therein contained being a *license* for a certain royalty, therein specified to be paid to appellant, his heirs, *etc.*, at certain times therein stated. And appellant *could not* as against such licensee (*appellee*) maintain a suit for *infringement* simply on the ground that the licensee has failed to pay the agreed sum.

Atkins v. *Parker*, 61 Fed. 593.
Hartell v. *Tilgham*, 99 U. S. 547.

And the failure to pay is the sole reason for commencing this suit. The action is to recover the amount of the debt, being a certain liquidated sum of money. Said first proposition conferred upon the appellee a *right to do an act* which *otherwise* would have been *illegal*, and therefore said first proposition was a *license*.

3 Cye., pp. 954, 955.

And the appellee (licensee) *had the right* to do these things which were necessary to the enjoyment of its license, such as building a machine which it was, in and by said proposal, licensed to use.

30 Cyc. 957.

As stated, the proposal in question is an instrument under seal, and as such it imparts a consideration. And, an *agreement to assign* a patent, is an executory contract, which may be enforced in a court of equity.

Whitney v. *Burr*, 115 Ills. R. 289.

Searle v. *Hill*, 73 Iowa R. 367.

Jones v. *Reynolds*, 120 N. Y. 213.

Dalzell v. *Dueber Watch Case Mfg. Co.*, 149 U. S. 315.

An agreement to assign a patent may be enforced by suit in equity to compel specific performance.

Macon Knitting Co. v. *Leicester Mills Co.*, 65 N. J. Eq. 138.

Cogent v. *Gibson*, 33 Beaver 557.

It is clear that appellant by said proposal conferred upon appellee a right of action, a right to bring and maintain a suit against appellant, and if appellee could maintain suit against appellant at any time he (appellant) can maintain suit against the appellee on the same instrument.

And said instrument, because of the *actual* interest conveyed, amounted to an assignment.

Douglas v. *Campbell*, 24 Ohio Cir. Ct. 241.

Union Switch, etc., Co. v. *Johnson R. Signal Co.*, 61 Fed. R. 940.

Ritter v. *Serrell*, 20 Fed. Cas. No. 11866, 2 Blach. 379.

And covenants and conditions in said instrument do not prevent it from operating as an absolute assignment, because there are in said instrument conditions *subsequent*, being a *stipulation as to royalty* (as in the case at bar).

Hull v. *Pitrol*, 45 Fed. 94. *Affirmed* in 145 U. S. 650.

Arnold Monophase Electric Co. v. *Wagner Electric Mfg. Co.*, 148 Fed. 234.

It is not a question of fact, but it is a *legal presumption*, that in all written contracts the party read the instrument, is familiar with the provisions thereof, and that he *assented* thereto at the time of the execution thereof.

Grace v. *Adams*, 100 Mass. 505.

The Postmaster General in the conduct of his office received, in accordance with the terms of his said advertisement, and retained, and retains, without objection, said instrument, to be kept by him under said statute, as evidence of appellee's rights in regard to the transaction in hand, and the *legal presumption* is that he read and is familiar with the contents thereof, and that appellee *assented* thereto.

Vol. 2, Encyclopedia of Evidence, p. 9.

The Postmaster General *knew* that the proposal in question contained the *terms of an offer*, and "where one accepts a paper which he knows contains the *terms of an offer, he will be bound* by it, and cannot be heard to say that he did not know what it contained."

American Insurance Co. v. *Neiburger*, 74 Mo. 167.

Cyc., Vol. 9, pp. 391, 392.

The appellee received from appellant an instrument in writing which it *knew* contained the *terms* of an *offer*, and it is bound to pay the purchase money therein stated and fixed at its request and express procurement as aforesaid.

Said proposal was in the alternative. And the appellee not having elected which particular offer it accepted, but retained all benefit under and by reason of said entire proposal and instrument and every proposal and proposition therein contained, the *appellant* elected to treat said transaction as a purchase by the appellee from the appellant of the property in question, and as a sale by appellant to the appellee of said property for said sum of twenty million dollars, being the purchase money in said proposal stated. And this suit is brought to recover said liquidated sum of money, together with interest thereon at the rate of five per cent. *per annum*, recoverable under Section 2 of Chapter 74 of the Revised Statutes of the State of Illinois.

Said several statutes of the United States clearly recognize the fact that a contract relating to said pneumatic tube service has been made by the appellee that is outstanding, and the Congress appropriated money on account thereof, by *purchase* or otherwise, now as *mail* cannot be "transported by *purchase*" it follows that said appropriation of money was an appropriation on account of the money due on the contract in question, it being the only contract before the court. As said statutes expressly prohibit the making of *additional contracts* unless hereafter authorized by law, the Congress recognized the existence of an outstanding contract on

account of the pneumatic tube service, and the contract in question is the only contract of which the court has knowledge. And this contract is by reason aforesaid recognized by the statutes.

U. S. Stat., Vol. 30, p. 442, and other statutes hereinbefore *cited*.

After the execution and delivery to the appellee of said proposal, the Congress appropriated by the four statutes hereinbefore referred to, money "For transportation of mail by pneumatic tube or other similar devices by *purchase* or otherwise." And at the time said statutes were enacted the government held in its sole possession, and perpetual keeping (and with the consent of appellant), said proposal, and by said statutes appropriated money to be used by the Postmaster General in said service "by purchase or otherwise."

It is self-evident that, as the mails cannot be transported "by *purchase*" that in law the money thus appropriated was intented by the government to be applied on account of the money to appellant or on account of said pneumatic tube *service generally* (thereby including the money due to appellant), but the money thus directed by law to, or appropriated for appellant has been diverted from the purpose for which it was thus appropriated, and no part thereof has been paid to appellant.

The legal effect of said several statutes making appropriations of money "for transportation of the mails by pneumatic tubes, or other similar devices, *by purchase* or otherwise" is, *concurrence* in, and *acceptance by law*, of the said proposal (so executed

by appellant to the appellee as aforesaid at its request), and then in the lawful and perpetual possession, and keeping of the appellee and so *with the consent of appellant.*

The appellee by retaining appellant's irrevocable proposal under seal (his deed), and by *failing to recovey* to appellant, and by making said several appropriations of money "for *pneumatic tube service by purchase or otherwise,*" has so conducted itself, as to lead a reasonable man to believe that appellee was assenting to the terms proposed, and appellee is bound

Smith v. *Hughes*, L. R. 62, 597, 607.
Mansfield v. *Hodgdon*, 147 Mass. 304, 306.
1 Parsons on Contracts, 491, *note* 1.

By said advertisement the government made its request known to appellant, and the *appellant assented* thereto, by executing and delivering his irrevocable deed to the government, and the same was and is, retained by the government, and the appellee *has not* repudiated the transaction, on the contrary it has made appropriations for said *pneumatic tube service* by *purchase* as aforesaid, and it is legally bound to pay the purchase money.

1 Sugden on Vendors, 385 (p. 252).

Appellant's bid was retained, and *action* was had thereon (Rec., p. 30), and said appropriations were made as aforesaid. This is, in legal effect an acceptance of said proposal by law. In the case of the *Postmaster General* v. *Narvell*, 1 Gilpin's Reports, U. S. District Court, Penna, 1828-1836. It was *held*, that where a bond had been retained by the Post-

master General, for two months, and six days, unobjected to, this fact alone, would constitute a contract—*an acceptance*. "In other words that receiving the bond, and retaining it for a considerable time without objection, is *sufficient evidence of acceptance.*" No objection being made in a reasonable time is, a *presumed* acquiescence and binds the party.

The appellant delivered as aforesaid his proposal to the appellee, and said proposal has been, and is, retained, and *unobjected* to, and has so been retained since A. D. 1892,—nearly twenty years—

"The acceptance of a deed or bond may be presumed from the fact that it was submitted for approval, and retained and acted on."

Bank of U. S. v. *Danbridge*, 12 Wheaton 64.
Graves v. *Laabon Nat. Bank*, 10 Bush Ky. 23.
19 American, Rec., 50.
Abbotts Trial Evidence, p. 45.

Said proposal was submitted and the Postmaster General took action in respect thereto.

Rec., pp. 29, 30.

The assent of the appellee is inferred from its profiting by the stipulation of the contract.

1 Parsons on Contracts, p. 476.

In the case at bar the element of *tort* is excluded *ab initio*, and,

"Where the validity of the patent is attacked (as in the case at bar) the *defense* shall come in as if the suit were on an express contract, with warranty,

and the defendant was setting up *failure of consideration.*"

Jabez H. Gill v. *United States*, 25 Court of Claims, 415.

If one sold *goods*, or his *land, under seal*, and there was nothing in the contract or the circumstances to show that the buyer was to come into possession, otherwise than by entering upon the land, and taking them, it would be presumed, that this was intended, and that the sale operated as a *license*, to do this, in a reasonable time, and a reasonable way, *which the seller could not revoke.*

2 Parsons on Contracts, p. 651.

Said proposal (being executed under *seal*), could *not* be revoked by appellant, the rights therein conveyed were in the hands of the appellee, and beyond recall by appellant, and appellee has received and retained the *right* to use the property, and it is liable on the contract. It has had, and enjoyed, what was contracted for, and it is no answer to say, that the same might have been had, without the contract. The appellee cannot both stand upon the patent, and repudiate it, nor upon the appellant's title, to the invention and repudiate that.

Milligan v. *Lalance & Grosjean Manufg. Co.*, Circuit Court S. D., New York 1884.

21 Fed. Reporter 570.

And if appellant's patents had been invalid, no defense could be founded thereon to a suit for the recovery of the purchase money.

White v. *Lee*, 140 Fed. R. 789.

McKay v. *Jackman*, 17 Fed. R. 641.

The appellee's title to the property sold to it by the appellant on credit would be upheld as against all the world, and appellant should be paid the purchase money.

Walker on Patents, §286.

The granting of a patent is a *quasi judicial* proceeding, and when once accomplished it is only revocable by the government for fraud established by bill in equity.

United States v. *American Bell Telephone Co.*, 128 U. S. 315, 336.

As the patents in question were not revoked they remained during the entire life of the patents, valid, subsisting patents, and no charge of fraud is made, or claimed as against appellant. The United States could not (without becoming liable to appellant) do *indirectly*, (through employing the Pneumatic Transit Co., of New Jersey, in any capacity) that which it could not do *directly*, without being liable to appellant.

Appellant deems it proper to quote the following from a "Public Document" of appellee, which said document is known as "The Pneumatic Tube Service Report of the Postmaster General to Congress, Relative to the Investigation of the Pneumatic Tube Systems for the Transmission of Mail (Doc., 289, H. R., 56 Congress) being a report of a committeee appointed by him under authority of law, and consisting of civil engineers of distinguished ability,—said committee found: "The pneumatic method of mail transportation, a novel, a valuable, and a mechanically successful system, ingeniously elaborated and

practically adapted in an admirable manner to the purposes of the Postoffice Department," (and further found): "The system of immense advantage to the business interests of the country in its facilitation of mail transmission, both locally and generally, throughout the United States, * * * the cost of this advance in postal methods is necessarily large, yet it is productive of *more* than a proportional advantage in large cities, and said committee further found that the practice of the Postoffice Department seems to have been to *own and operate said devices and equipments.*"

It appears from said report that said pneumatic tube devices bring *profit*, and the Court of Claims should have herein *held*, as they held in another case, that the maxim of *Grotius* was applicable that "Whatever brings *profit* is binding" and further that "we must condemn them of injustice who refuse to perform the agreement, and yet still retain that which they could never have had without the agreement."

Reeside v. *United States*, 2 Court of Claims, 33.

It is certain that the appellee would *never* have had the *right* either by *license*, or *sale*, or otherwise to use appellant's said inventions if he had not so *assented* to appellees said request, by its said advertisement made as aforesaid, and it would seem that said maxim of Grotius is quite applicable to the conduct herein of the appellee.

The United States was at its solicitation, vested, by appellant with entire and irrevocable power, and

authority (and to the fullest extent), over said enormously valuable property, and to withhold the purchase money from the appellant for twenty years is an act, monstrously unjust and illegal, and is an act of official despotism unjustly inflicted upon appellant, the man called by the government to its aid, —the one man, (of all men who ever lived) through whose research, ingenuity, skill, labors, and property, *solely*, pneumatic transportation of the mails became possible.

The United States would not have directed the Postmaster General to advertise for proposals if, a *contract* in respect to pneumatic tube service had not been contemplated by the government as an outgrowth of, or from, said advertisement, and with this understanding in view, the Postmaster General advertised, as he was directed by law in that behalf, and appellant in due time, and form, *assented*, to the request of the government by said advertisement made, and by said instrument in writing he placed as aforesaid, his immensely valuable property in the power, and exclusive possession of, the appellee, precisely as both parties contemplated, and desired, and both parties have at all times *concurred* therein, and *assented*, thereto, and it follows that no reason exists, either in law, or morals, why appellee should not pay to appellant the purchase money aforesaid,—purchase money, named in said proposal at the express procurement of the government and under these circumstances it is wholly immaterial whether the patents were *infringed*, or whether the devices were ever *used* or not. If the government did not use the devices in question, *it*

had the right from appellant to use them, (a right granted by deed to appellee at its request), and it had the evidence of that right in its lawful possession, and it cannot be heard to say in defense of this action that it has not made use of the property in question.

Concurrence in, assent to, and acceptance of, said proposal have been so manifested by, and maintained as aforesaid.

Furthermore the validity of the patent in question was attacked, and it is *held*, that, "where the validity of the patent is attacked, the defense should come in as if the suit were on an *express contract* with warranty, and the defense were setting up a failure of consideration, accordingly, if the facts are such, that a contract may be *implied*, in these cases the *law* will imply one, but the law will *not* treat the *user* as an *infringer*."

Jabez H. Gill v. *United States*, 25 Court of Claims, R. p. 415.

The common law announced in the case last above *cited* has never been questioned, and the government by attacking the validity of the patent *admitted the contract sued on*. Its said attack was only in mitigation of the damages claimed under the very contract by it herein admitted to have been entered into. And no loss or damage was shown. The purchase price is stated in the contract thus admitted, and that purchase price, *plus* the interest due under the statute of Illinois is the measure of recovery herein. The implied contract mentioned in the case last *cited* is one of law, and this operates *merely* to *create a debt* (as hereinbefore stated "to balance

the inequality existing between the parties." And where the purchase price is fixed in the instrument in question (as in the case at bar), the amount so fixed in said instrument is the precise amount for which the law will imply a promise by *merely creating a debt* for that amount for the purpose aforesaid.

If finding VII. *had* set out the *entire contract* which the appellee made with the Pneumatic Transit Company of New Jersey, said contract would have here shown of record, (by comparison), that the contract so made with said company was merely a contract whereby said company agreed to furnish to the appellee, *work, labor, and materials*, and therewith *build* a machine, *identical* in every essential, with, and like, the machine described in appellants said proposal, and devices therein, and in said particular description described, and for the *sole use of the government*, but the Court of Claims neither made a *finding* in respect to said contract, nor did it set out or disclose the *entire contract*. The court will observe by examining the 7th and 8th lines from the *bottom* of Rec., page 30, that the most important part of said contract was wholly omitted by the court from its recital of evidence, by it, denominated, finding VII.

The omitted part of said contract, contained the description of the machine thereby (by said entire contract) contracted, to be built, and if said omitted part, had been set out, or herein disclosed, the court could have readily seen, that the machine so contracted to be built, would when completed, be the identical device so sold by appellant to the appellee as aforesaid.

Said contract did not operate as a *rejection* of appellant's proposal, as the Court of Claims seems to have supposed. On the *contrary* said contract with said Pneumatic Transit Company was the means adopted by the government, whereby the appellee would enter into the *actual, physical* use, and enjoyment, of the identical property by it purchased of the appellee, less than sixty days before said contract with said Pneumatic Transit Company was entered into.

Said contract with said Pneumatic Transit Company, of New Jersey, was *not* a contract for the *purchase* of a device. But it was a contract merely, to furnish *work, labor and materials*, and therewith build, *for the government* a machine for the sole and exclusive use of the government.

VAN BRUNT, J., in:

Miller v. *Fitzgibbons*, 9 Daly N. Y. 505. Rec., pp. 30-31-32.

An agreement by one, to construct an article especially for, *or* according to the plans of another, whether at an agreed price, or not, although the transaction is to result in a sale of the article, is a contract for *work, labor and materials*.

Mixer v. *Howarth*, 21 Pick. (Mass.) 205.

Said so-called finding of fact VII. Neither finds a specific fact, nor recites *all* of the contract. *See* Rec., p. 30, 7th and 8th lines from bottom of said page. And the Court of Claims, erroneously and *prematurely* decided its said conclusion of law, and entered said judgment, upon a record herein which contained *neither* a *full* and fair, *recital* of the evi-

dence, (the contract last mentioned) nor a finding of any fact in respect thereto. A finding which is *in truth not* a finding of *any fact*, and which is *not* a full and truthful *recital* of *all* of the evidence, in respect thereto, is not such finding, as authorized the conclusion of law, and judgment, and it follows that said conclusion of law and judgment are *premature*, and erroneous.

The appellee could not enter into the full use or enjoyment of any device whatever, except by *contract* (as it has no physical being), and the appellee, the sovereign, performs all of its several duties, through some agency by it selected, and this, usually, by entering into contract in respect thereto.

And as the government had obtained from appellant the right to use the device in question, before it contracted to have said device built for its use, it follows that the government did *not infringe*, *nor could it* in any manner infringe the letters patent in question, nor could its agent, said Pneumatic Transit Company of New Jersey (said builder), infringe upon said letters patent; the appellee then had the right to build, or to employ said company to build said machine and it had the evidence of said right (said proposal) in its perpetual possession and keeping, and this under the statutes of the United States.

Manifestly the Court of Claims erred in law in ordering "to the files" (Rec., p. 44) and in *excluding* from the record as a part of claimant's application for appeal the several matters and things in said application mentioned and therein made a part thereof, and *thereby allowed*, being specifications of

the errors alleged to have been committed by said court, and said court *also* erred in law, in failing and in neglecting to, and in refusing to "certify said specifications or such alterations and modifications thereof or of the points decided and alleged for error, as distinctly, fully and fairly present the points decided by the court," in accordance with the law and requirements of Rule 2 of the regulations then prescribed by the Supreme Court of the United States under which appeals could then be taken from the Court of Claims to this honorable court, and said Court of Claims also *erred in law* in failing to set forth, or permit to be set forth, in the record herein any specification whatever concerning said several matters or either of them.

Said rule of this honorable court was designed for the protection of the parties in the enjoyment of their legal rights, and in effect it is an *order* of this court made in *this* cause, and one which the Court of Claims was, in law, bound to observe, and comply with, the Court of Claims had no discretion whatever in the premises. The Court of Claims was by this honorable court (a court of superior jurisdiction and acting under the law) *peremptorily* and decisively *ordered* to comply with the mandate and provisions of said rule. And as said court *did not* comply with said rule, it follows that an *affirmance* of the judgment in question, by this honorable court, would be a judicial determination by this court of its approval of the violation of the law, and of its rules, by the inferior court, rules which were by order of this court made expressly for the preservation of the rights of the parties on appeal to this honorable court.

The Court of Claims further erred, in that upon amending its findings, it failed and neglected to vacate and set aside its conclusion of law, and thereafter decide its conclusion of law "in open court" upon said amended findings. This case is totally different from a case where findings of fact have been made, but not entered of record until after the judgment is entered, and after judgment is entered said identical findings of fact are spread at large upon the record.

In the case at bar the findings of fact (the *verdict*) has been *changed* since the conclusion of law was decided, and such change in the *basis* of the conclusion of law required a new conclusion to be decided upon the altered findings and this, "in open court." By amending said findings of fact, the Court of Claims erroneously intermingled and destroyed the foundation on which its said conclusion of law solely rested, and thereupon said conclusion of law no longer supported the judgment. The order of the Court of Claims ordering "the judgment to stand" is erroneous, the judgment is fallen, because there is no conclusion of law whatever on the *new* or amended findings of fact. The legal effect of *amending* the findings of fact was to destroy the conclusion of law decided upon the findings of fact *before* such amendment was made.

The record, page 10 (marginal page 19) shows what purports to be "Findings of fact (as amended) and conclusion of law and opinion of the court, filed as of January 29, 1906," but the *time* when they were filed does not appear, and there is no order of court in the record directing that said findings be

filed as of said "January 29, 1906," a record which shows that amended findings were filed "as of" any particular date is erroneous, in the *absence* as in this case of a *prior order of court* (appearing of record) *ordering* that they be so filed, and the fact that the court, two and one-half years after said January 29, 1906, entered an order that "The claimant's motion to amend findings is allowed in part, and overruled in part, as per amended findings this day filed" (Rec., p. 44) is not equivalent to an order of the court directing in what manner, and by whom, and as of what day, said findings should be filed.

If this honorable court should hold that said findings were filed May 20, 1909, the record would yet remain erroneous, because there is no order of court directing that said findings be filed as of any day or date whatever. The court can only speak by its record, and there is no order of record directing that said so-called findings of fact (as amended) be filed as of January 29, 1906, or at any other time. There is neither stability, nor safety, in judgments or judicial proceedings, entered of record, if changes therein can be lawfully made without a *prior order of court* in that respect, *shown of record*, (and on its face) to have been entered by the court.

In every case, a prior order of court (entered of record by the court) is necessary, if findings, or amended findings of fact, are to be lawfully filed, *nunc pro tunc*, and without such prior order of the court shown of record, the filing thereof is unauthorized and erroneous. And it follows that there are no findings of fact lawfully appearing of record herein to support the said conclusion of law or judg-

ment appealed from, and said judgment so "ordered to stand" was and is erroneous and prematurely "ordered to stand."

The Court of Claims erred in failing to, and in refusing to decide as a conclusion of law, that the claimant (appellant) is entitled to recover judgment in accordance with the prayer of claimant's amended petition in said cause filed, and erred in failing and in refusing to order judgment for the claimant (appellant) in accordance with the prayer of his amended petition in said cause filed.

It was important that the record in said cause be preserved by bill of exceptions, but the court erroneously refused to sign and seal a bill of exceptions prepared and presented by the claimant to said court in due time, which said bill of exceptions was by said chief justice "ordered to the files" May 28, 1909.

And said court erred in neglecting to grant claimant's demand shown at pages 62 and 63 of the transcript of record, and said court erred in ordering said demand "to the files for future consideration."

Rec., p. 63.

The Court of Claims also erred in failing and in neglecting to dispose of the motion in said cause filed, for a rule on the appellee to show cause why it should not be adjudged guilty of contempt (Rec., pp. 61, 62) and punished accordingly, and in failing and in neglecting to enter judgment in said cause in favor of the appellant, and against the appellee, and the appellant here, and now (because of the reasons

in said motion mentioned and referred to and appearing at pages 61 and 62 of the transcript of record), renews in this honorable court said motion for rule, and asks judgment thereon, and further proceedings in that behalf in this honorable court in accordance with the law and the rules of this honorable court in such case made and provided.

Rec., pp. 61, 62, 46-66.

Neither the original findings of fact, nor the amended findings authorized the court in deciding that, "the claimant (appellant) is not entitled to recover and that the petition be dismissed," and the action of the court in so deciding its said conclusion of law, as also, in entering judgment thereon, was, and is, erroneous in law, as is also said order of the court, wherein it is ordered that the claimant's "motion for new trial be overruled. The judgment and opinion to stand," and said judgment and said several matters are in law erroneous, because of the several reasons aforesaid.

The findings of fact, as originally made, and also as amended, required in law, the court to decide its conclusion of law, in favor of the claimant (appellant herein), and said court erred in neglecting and in refusing to decide its conclusion of law in favor of the claimant (appellant herein), and also erred in neglecting and in refusing to enter judgment in favor of the appellant and against the appellee herein.

All of said findings of fact upon their face, and upon inspection thereof, required the court to decide its conclusion of law, in favor of the claimant (ap-

pellant herein) and to enter judgment thereon in his favor.

Appellant was, and he is, greatly wronged and embarrassed herein, by reason of the existence of the several matters alleged in appellant's said twenty-seventh, twenty-eighth and thirty-fourth assignments of error, and appellant, not being advised by counsel, has been uncertain as to the *best* (and the least objectionable) manner of proceeding in respect thereto, he, therefore, respectfully asks the tender consideration of the court in the premises, and states that, embarrassing as the situation is, appellant considered that he would be guilty of the crime of *negative misprision* and also be recreant to his duty if he failed to reveal to the court in some proper manner (of record herein) the actual condition of the record upon which this judgment is based (this being the court of *last* resort), and in so doing he desires the court to distinctly understand that he refers, *solely* to the *record* (and he is *not* to be understood as speaking *unkindly* of the attorney for the appellee or of his moral conduct in making said record).

Appellant states that while the material allegations in said assignments of error are undoubtedly *true*, as *shown of record*, yet he considers that it might be humiliating to this honorable court, and detrimental to the government, and to the Department of Justice, to publish in this brief said last mentioned assignments of error in full. Under these circumstances appellant respectfully requests the court to examine and give due consideration to said assignments of error, apearing at pages 48 and

50 of the printed record herein, together with the exhibits therein mentioned (Rec., pp. 51-63, both inclusive), and upon such examination to allow appellant the full benefit thereof.

It is apparent that the rule which would, (under other circumstances), require publication in appellant's brief of the several assignments of error by him relied on, is, as to said 27th, 28th, and 34th assignments of error, *inapplicable* and *void*, because, the court will never by its rules or otherwise require a party to commit the *crime of positive misprision*, or misprison of felony, or any other offense against public justice, nor will this Honorable Court refuse to award justice herein to appellant because he has at all times endeavored herein, to the best of his skill and ability to preserve the good name of the state, by declining to comply with a rule which seems to appellant, under these circumstances, to be wholly *inapplicable, and void.*

An additional cause of embarrassment to appellant is the fact that the attorney, mentioned in said assignments of error, has departed this life. The mortal career of said attorney, is, of course, closed, but the *record* which he made while acting on behalf of appellee, is open for discussion, and said *record* embraces a *written confession* of said attorney that he *did* commit the act in said assignments of error principally complained of, and for the commission of which said act he *then stated* that "Counsel for the defendant assumes all responsibility."

A responsibility by said attorney cast upon his successors in office, and a responsibility now resting

upon them, and upon the appellee, whether they will or no.

Appellant does not desire to now discuss the moral aspect of obtaining a judgment by the methods confessed of record by appellee, nor the contempt involved, in seeking to obtain *affirmance* thereof, these matters are so plain that they do not require comment.

Appellant desires, and intends here, to solely discuss this *record*, a record wherein is disclosed a certified copy of a written confession that the record in said cause in the Court of Claims was forged and falsified on behalf of the appellee, who thereon, subsequently won this suit, involving twenty million dollars.

Rec., p. 51.

The *essence* of *forgery* consists in making an instrument appear that which it is not.

English Law Reports, 100.

Rec., p. 200 (Crown Cases Reserved).

A fraudulent insertion, alteration or erasure of *a letter* in any material part of the instrument, whereby a new operation is given to it, will amount to a forgery.

1 Stro. 18.

1 And. 101.

5 Esp. 100.

5 Strobb 581.

It is forgery at common law fraudulently to *falsify* or falsely make records and other matters of a public nature.

1 Rolle Abr. 65, 68.

Forgery may be committed of any writing which, if genuine, would operate as the foundation of another man's liability, or the evidence of his right.

3 Greenl. Ev., Sec. 103.

2 Mass. 397.

And so of a *deposition* to be used in court.

State v. *Kimball*, 50 Maine R. 409.

And so of a *copy* of any instrument to be used in evidence in the place of a real or supposed original.

8 Yerg. 150.

Forgery may be of a *printed* or engraved as well as of a written instrument.

3 Gray 441.

9 Pick 312.

The libelous, false, and self-serving statements, made by said attorney in his confession, are of no value to the appellee, and they do not even tend to relieve said attorney or the appellee from *legal guilt*. The *legal guilt* remained whatever he may have "thought," or, thereafter, said he thought. Neither his thoughts or his *belief* justified him in *falsifying* the record.

"On the trial of an Indictment for making and uttering a *forged deposition* to procure a divorce, the *belief* of the respondent in the truth of the statements in the deposition, and the fact that his object in forging it was to procure a divorce to which he *believed* himself legally entitled, are no defense. *

* * The forging of any writing by which a person *might be* prejudiced is forgery at common law."

State v. *Kimball*, 50 Maine Reports (Hubbard), Vol. 6, p. 409.

The sincerity of the belief of the defendant of the truth of the matters stated in the counterfeit deposition, and the objects sought by him, cannot take away the *legal guilt* which would attach to him if this belief, and these objects, were wanting.

State v. *Kimball*, 50 Maine R. 409.

The most embarrassing matter of all remains to be stated as follows, that is to say:

The act confessed by said attorney to have been committed by him was and is punishable both at the common law and under the statutes of the United States, and it follows as a *matter of record* that the judgment from which this appeal is prosecuted was obtained through and by means of *criminal fraud, committed on behalf of the successful party*, being a judgment which would, if *affirmed* by this court (with knowledge of the facts), put an end to all hope of obtaining justice in the courts, and one which (as a precedent to be followed), would speedily end civilization. Appellant knew by inspection of the record that said offenses had been committed, and he deemed it his right and his duty, under the law and his oath, as a member of the bar of this honorable court, to in some proper manner *of record* herein, and under the *seal* of the Court of Claims to advise and warn this honorable court of and to reveal to it the true, criminal and fraudulent nature of the judgment

sought to be affirmed herein, and this, notwithstanding efforts and obstacles operating to throttle and suppress the *truth* by limiting the record, and thereupon appellant, because of a *legal necessity* and *obligation* resting upon him, and in pursuance of his duty to this honorable court, and of his duty to his country, and to himself, and to the end that he would not be guilty of concealing, as well as a *victim* of, the crime mentioned (and guilty of *negative misprision*), appellant prepared with such detail and exactness as he was *then* able to command, and alleged according to law, and rule in that behalf, in the Court of Claims, and filed in the Court of Claims with his said application for appeal, certain specified causes for allowance of said appeal, and appellant duly assigned according to law, and rule in that behalf, upon the record thereafter filed herein, said especially designated (and other) assignments of error, and the same are, and they have at all times remained *unobjected to*, and they are *printed* by the government, and they *are*, and they *remain* part and parcel of this record, and the material allegations of said assignments of error, are verified and proven in the same manner (under the seal of the Court of Claims) as all other portions of the record are proven, and they are thereby brought to the attention of this honorable court, and the court is thereby informed, and advised, by duly certified copies of the record in this cause, emanating from the Court of Claims (and under the seal of said court) of the true, and fraudulent character, of the judgment sought herein to be affirmed, and in bringing said matter before the court in the manner stated,

appellant considered that said matter would be properly before the court upon *appeal* and also by way of *petition* or plea, that is to say, said assignments of error are under the law, and rules, a part of the record in said cause herein. Furthermore, this suit was commenced under the statute, by appellant filing in the Court of Claims his *petition* to the government, for the "redress of grievances," therein stated, and the appeal from the judgment of the Court of Claims clothes this honorable court with jurisdiction to hear and determine petitioner's said grievances (*Chappel* v. *United States*, 160 U. S. 499), and the Constitution of the United States expressly reserves to its citizens their natural right to "petition the government for the redress of grievances," and the appellant, in the exercise of his natural right of petition so guaranteed to him by the Constitution, as aforesaid, had the right to file said assignments of error in this honorable court by way of *additional* or *supplemental petition* herein to the government, for the redress of *subsequent* or other grievances concerning the same subject-matter.

In the Court of Claims appellant was addressing his petition to his sovereign *then* represented by the Court of Claims, and in this honorable court appellant is *yet* engaged in addressing his sovereign represented by the Supreme Court, and in both instances upon his "*petition* to the government for the redress of grievances," and it is the right and duty of appellant to inform his sovereign (by filing his *supplemental petition* in this honorable court) of the wickedness of its servants, and officials, and

of the place, time and manner in which *fraud* has been committed, and justice defeated, in this cause, and this right appellant has exercised, and he has performed his said duty herein to the best of his skill and ability, and, as he believes, in accordance with his oath, as a member of this bar, and in accordance with his legal duty to reveal said matters to the court.

Whether said assignment of errors, Nos. 27, 28 and 34, are to be regarded by the court as "assignments of error" or as a *supplemental petition*, or as a *plea of fraud* to a judgment recovered, matters little. The important matter is the *fact* that this honorable court (the sovereign) *knows* by inspection of this record, and it is informed by a certified copy of a certain matter of record, that the judgment appealed from was obtained upon a record which had been previously and illegally changed on behalf of the *successful party*, in the inferior court. In this case the government occupies the same plane as the appellant, it has no greater right than appellant. *If appellant* had lost all sense of morality and justice, and had *forged* the *record*, would he have won this suit? *Most certainly not. He* would have been *imprisoned*, and his suit (he being in *contempt*) would have been dismissed. It is impossible, of course, to punish the Government by imprisonment, but it *is* possible, and appellant submits that it is the duty of the court to adjudge the Government to be in *contempt*, and to enter judgment herein in favor of appellant, and against the Government (in accordance with appellant's said petition) as by *nihil dicit*. And, accordingly, appellant so moves the court to do. The effect of such

judgment will not be to wrong the Government in any degree or manner. It will be treating the appellee as appellant would in law, be treated under like circumstances. It will merely expedite and terminate litigation which has been in active progress for more than *fourteen years*, and in which appellant has been unjustly required to expend substantially all, of his available fortune.

Appellant has not by said assignments of error injected into the record something which ought not to be there. On the contrary, appellant has thereby *prevented* the *exclusion* of matters which *should* be known by this Honorable Court, and matters which it was the duty of appellant to *reveal*,—matters of the utmost importance to the court, and to the Government, as also to the appellant. And matters which neither the Attorney General nor the appellant can conceal or fail to reveal to this Honorable Court without being guilty of negative misprision, (misprision of felony).

It is apparent by, and as aforesaid, that the conclusion of law made by the Court of Claims is worthless. The findings of fact and the conclusion of law thereon should *not* be in *favor* of the *guilty* party, but it should be in favor of appellant, the *innocent* party.

Appellant desires to state that insofar as he is informed, no person now connected with the Department of Justice had anything to do with the commission of the offenses complained of, nor does he deem any person now connected with said department so lawless, as to approve of the commission of said offenses.

The Department of Justice as now conducted is

held in high esteem, but the treatment accorded appellant, at the hands of its said *former* attorney, was, as this record shows, monstrously unjust, and oppressive.

The legal situation, so created as aforesaid, by the unlawful conduct of said attorney, cannot be changed, by any feeling of pity for the man.

By his courage, the *name* of *Saul* is immortalized, —*his conduct*, and the lapse of more than *three thousand years*, have "demonstrated, that all men who desire fame, after they are dead, are *so to act* that they may obtain the same."

> Antiquities of the Jews, Josephus, Vol. 1, p. 221 (Book VI).

It is self evident that after said judgment was entered (in the absence of an order granting a new trial) no evidence could be heard by the court, and it is also self evident that the particular bearing which the false deposition might have had on the trial of the case, cannot be now considered. It is only necessary for the sovereign to be thus advised that the trial was not had upon the depositions as returned into court by its then accredited officers, but upon deposition one of which had been so changed and uttered as aforesaid on behalf of the sovereign. The sovereign has *two* courts, but it only has *one conscience*, and to that conscience I now appeal.

Wherefore appellant respectfully prays that all of the depositions, evidence, files and record in said cause be ordered by this Honorable Court, (or so much thereof as may be necessary) to be by the ap-

pellee or by the clerk, or assistant clerk of said Court of Claims to be produced for use herein, and for all lawful purposes in this cause, and to the end that justice be done.

In conclusion, appellant, by reason of the matters aforesaid, respectfully prays this Honorable Court to reverse said judgment and to enter judgment herein in favor of appellant and against said appellee, in accordance with the prayer in that behalf of appellant's amended petition of record herein, or, that this Honorable Court reverse and remand said cause to the Court of Claims with directions to said court to further proceed in said cause by deciding a conclusion of law therein in favor of the appellant, that the claimant is entitled to recover in said cause in accordance with the prayer of his amended petition in said cause filed, and that said Court of Claims enter judgment in favor of the appellant and against the appellee upon said conclusion of law—all in accordance with the prayer of appellant's amended petition in said cause filed. And that this Honorable Court will grant such other and further, or other and different relief in the premises, as to the court shall seem meet, and the appellant will ever pray, etc.

Respectfully submitted.

By JAMES W. BEACH,
Appellant, and

By JAMES W. BEACH,
Attorney pro se.

By JAMES W. BEACH,
Counsel for Appellant.

CHICAGO, September 1st, 1912.

BRIEF FOR THE UNITED STATES

13

No. 7.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

JAMES W. BEACH, APPELLANT,

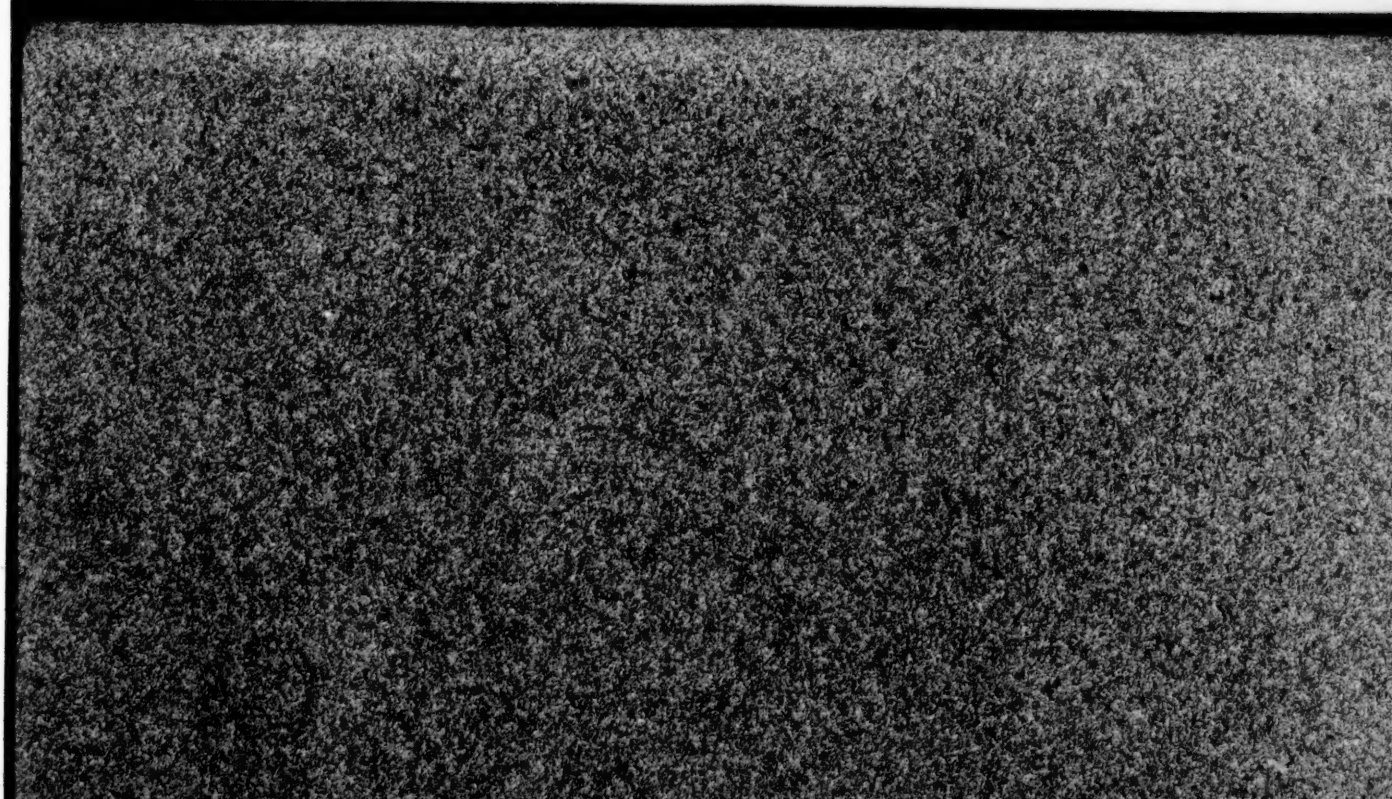
v.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1912



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JAMES W. BEACH, APPELLANT,
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THE UNITED STATES.
No. 7.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case is here on appeal from the judgment of the Court of Claims dismissing the petition wherein appellant sought to recover from the United States the sum of $20,000,000 and interest thereon as the purchase price under an alleged contract for certain letters patent. It is claimed that the Government, through its Postmaster General, entered into a contract and, indeed, purchased appellant's patents, which it is alleged covered inventions relating to the transportation of mail matter by means of pneumatic tubes. Appellant's lengthy statement and the inferences and conclusions sought to be drawn from certain statements

that are not properly in the record depart so far from the facts that they necessitate a statement of the case on behalf of the United States.

The first dealing of the Government for the more rapid dispatch of mail matter by means of pneumatic tubes, took the form of a preliminary inquiry into the subject by the Postmaster General, under the limited authority of section 6 of the Post Office appropriation act of July 13, 1892 (27 Stat. L., 145), which provided:

> That the Postmaster General is hereby authorized and directed to examine into the subject of a more rapid dispatch of mail matter between large cities and post-office stations and transportation terminals located in large cities by means of pneumatic tubes or other systems, and make report upon the expense, cost, and advantages of said systems when applied to the mail service of the United States, and the sum of ten thousand dollars is hereby appropriated therefor.

Pursuant to this authority the Postmaster General had published in several newspapers the following advertisement (Rec., p. 12):

MAIL SERVICE BY PNEUMATIC TUBES OR OTHER SYSTEMS.

> POST OFFICE DEPARTMENT,
> *Washington, D. C., July 26, 1892.*
>
> Authority is given the Postmaster General by the provisions of the act making appropriations for the service of the Post Office Department, approved July 13, 1892, "to

examine into the subject of a more rapid dispatch of mail matter between large cities and post-office stations and transportation terminals located in large cities by means of pneumatic tubes or other systems," with the view of ascertaining the cost and advantages of the same.

Acting upon this authority, I hereby give notice to all persons who are the inventors, assignees, or otherwise owners, of any pneumatic tube or other device suitable for and adapted to said service, to present in writing, under seal, on or before Thursday, the 8th day of September, 1892, addressed to the "Postmaster General, Washington, D. C.," and marked "Rapid Dispatch of Mails," a full description of such tube or device, together with a statement of the evidence of title to or ownership of the same, which evidence may subsequently at any time be required by the Postmaster General. Said description must state the kind and quantity of motive power used in operating the same; the method of its application; the capacity of the tube or device; and offer to submit a test; the precise place and terminals where it is proposed to conduct the test; the date at which the tube or device will be in condition to be tested, and the time that will necessarily be occupied in making the test; and, generally, anything else whereby the Postmaster General can judge of the relative value of the several tubes or devices that may be submitted, and the adaptability of each to said service.

It is preferred that the tests aforesaid be conducted in the city of New York, Brooklyn, Philadelphia, Chicago, or Washington, D. C., and between adjacent cities, or between a post office and substation or transportation terminal.

It is also requested that each of said descriptions be accompanied by a proposal offering to license to, or otherwise invest in, the United States the right to use the tube or device, to lease by the year, or to sell, assign, and transfer it to the United States as a purchaser.

The tests aforesaid must be made without cost to the United States, and upon the express condition that the person offering said tube or device waives all claim against the United States for any expense attending the construction, tests, or preparation for said tests, or any other expense attending the same. The Postmaster General has no authority in law to contract for the expenditure of money for the use of or purchase of any such invention, nor is there any existing appropriation out of which the cost of the same could be paid.

The right is reserved to decline any test of any tube or device submitted in response to this advertisement, and to reject any proposal that may be made.

The propositions and result of all experiments will be the subject of a report to Congress.

JOHN WANAMAKER,
Postmaster General.

Before submitting his proposal in answer to the advertisement, appellant wrote the Postmaster General (Rec., p. 13, letter of August 20, 1892), requesting information as to requirements with reference to including in the proposals a statement of prices at which the owner would license, lease, or sell, assign, and transfer to the United States the right to use the tube or device.

On being informed (Rec., p. 14, letter from Mr. Wanamaker, Postmaster General, dated August 23, 1892) of the necessity of stating prices in order to give the proposals any value, appellant submitted his proposal in the form of a letter, under seal, dated August 30, 1892 (Rec., pp. 14–16), the last paragraph of which imposed terms as to acceptance, which terms in effect and in fact limited the offer to a definite specified period of time and required that the Government notify appellant of its acceptance within such period of time, otherwise the offer would not be binding upon him.

Seven other persons or companies also submitted proposals in answer to the advertisement.

Referring to the proposals and other data he submitted, appellant wrote (Rec., p. 26, letter of "Sept. 1st, '92") requesting that the Postmaster General—

> Please file and consider said proposals in accordance with the terms of said advertisement.

A committee of three expert postal officials was appointed by the Postmaster General on September

15, 1892, to consider the proposals received in answer to the advertisement, and on September 29, 1892, that committee submitted a report to the Postmaster General, accompanied by a statement that one proposal had been made which was without objection on the part of the Government and more favorable than any other, and for that reason and because no one of the other bids offered any definite terms in giving a specific service of a practical character within the near future this offer was recommended for acceptance. The committee's report (Rec., p. 29, paragraph beginning "The offer known as 'No. 3'") stated:

> This offer is the best that has been received, and it is believed to be highly advantageous to the department, because it will enable it to make an immediate and practical test of the pneumatic system. Your committee, therefore, desire to make the copy of the proposition No. 3, hereto attached, a part of this report, and they recommend prompt acceptance of the offer, that the test may be made without delay.

Proposition "No. 3" was submitted by the Pneumatic Transit Company, with which the appellant had no connection. The company offered to put down pneumatic tubes to connect two offices in the streets of Philadelphia, without expense to the Government, without charge for one year's use of the same, and without liability thereafter. This offer was considered as highly advantageous, be-

cause it would enable the Postmaster General to make an immediate and practical test of the pneumatic system. The recommendation was emphasized by the statement that an arrangement could be made with the designated company for the construction of an experimental line without passing upon the merits of the system itself, which, in the opinion of the committee, was a matter to be considered after the experiment. This left the commission the opportunity, which was stated by them to be their purpose, to give future consideration to each one of the systems submitted by the various bidders on the original call.

Notice was taken of each of the proposals submitted, and in reference to appellant's proposal the committee stated that it appeared from his bid he would make a contract to construct experimental lines *for a consideration to be mutually agreed upon* and would sell or lease the same and have the experimental line in readiness for operation in from four to twelve months from October 1, 1892.

Pursuant to the report of the committee of expert postal officials, the Postmaster General, on October 20, 1892, entered into a contract with the Pneumatic Transit Company of New Jersey (Rec., pp. 30–32) for the installation and operation of a pneumatic tube system connecting the main post office at Ninth and Chestnut Streets with the sub-post office on Chestnut Street below Fourth Street,

in the city of Philadelphia, the installation, operation, and entire removal, if required, to be without any expense to or liability on the part of the Government.

The Postmaster General, in the sixth paragraph of the advertisement for proposals (Rec., p. 13), reserved the right "to decline any test of any tube or device submitted" and "to reject any proposal" made, but, inasmuch as the committee decided to put over further consideration of the proposals and the examination into the merits of the various systems until the test of the experimental line had been completed, the right reserved to decline or reject was not exercised, and appellant's proposal, along with the others submitted, was placed in the files of the Post Office Department for future reference.

On the 25th day of February, 1899, appellant filed his original petition in the Court of Claims. (Rec., p. 1.) Subsequently, to wit, on the 12th day of February, 1904, appellant, by leave of court, in lieu of his said original petition, filed an amended petition. (Rec., pp. 1–5.) Answer was filed on the 14th day of December, 1905 (Rec., p. 9), and the case came on to be heard and was argued and submitted. The original findings of fact, conclusion of law, and opinion were filed as of January 29, 1906, and judgment was ordered to be entered as follows (Rec., p. 43):

> The court, on due consideration of the premises, find for the defendants, the United

> States, and do order, adjudge, and decree that the petition of the claimant, James W. Beach, be, and it is hereby, dismissed.
>
> By the Court.

Thereafter, to wit, on the 18th day of April, 1906 (Rec., p. 43), motions were filed by appellant for a new trial and amendments of findings, and the court entered an order as follows (Rec., p. 44):

> It is ordered that claimant's motion for a new trial be overruled.
>
> The claimant's motion to amend findings is allowed in part and overruled in part, as per amended findings this day filed.
>
> The judgment and opinion to stand.
>
> By the Court.

THE ISSUE.

The question here for determination is:

Whether the acts of the parties as shown by the correspondence and facts set forth in the findings are such as to constitute either an express or an implied contract between the United States and appellant whereby the Government becomes liable for the stated purchase price of appellant's patents.

ARGUMENT.

Numerous errors have been assigned which are clearly irrelevant and immaterial. It is inconceivable that the court below could have made thirty-five distinct different errors, as alleged by appellant, in passing upon the question at issue. We believe the whole matter can be determined from

the first and second assignments of error, which are practically the same.

First and Second Assignments of Error.

The conclusion of law of the court below is manifestly correct, being based upon findings of fact in substantial accordance with the evidence. The assignments of error appear to be merely the assertion of an opinion by appellant without any foundation in fact or valid reason therefor.

According to appellant's contention, the Government entered into a contract with him, under which it became liable in the sum of twenty million dollars as the purchase price for certain letters patent.

Whether or not the court below was in error in deciding as a conclusion of law that appellant is not entitled to recover depends, therefore, upon the existence or nonexistence of the alleged contract appearing from the facts found.

This is the only question at issue in the case, and a review of the findings on which the conclusions of law is based will clearly show complete failure on appellant's part to establish either the existence of such contract or any intention or authority of the Postmaster General to make and bind the Government as a party to any such contract.

As appears by the fifth finding, the Postmaster General's authority under section 6 of the post-office appropriation act of July 13, 1892 (27 Stat., 145), was limited, and notice to this effect was accordingly given in the first, second, and fifth para-

graphs of the advertisement published by him (Rec., pp. 12–13), as follows:

> (1) Authority is given the Postmaster General by the provisions of the act making appropriations for the service of the Post Office Department, approved July 13, 1892, "*to examine into the subject of a more rapid dispatch of mail matter* * * *" *with a view of ascertaining the cost and advantages of the same.*
>
> (2) *Acting upon this authority*, I hereby give notice to all persons who are the inventors, assignees, or otherwise owners of any pneumatic tube or other device * * * to present in writing * * * a full description of such tube or device, * * *. Said description must state the kind and quality of motive power used * * * and, generally, anything else *whereby the Postmaster General can judge of the relative value of the several tubes or devices that may be submitted and the adaptability of each to said service.*
>
> (5) * * * * * * *The Postmaster General has no authority in law to contract for the expenditure of money for the use of or purchase of any such invention, nor is there any existing appropriation out of which the cost of the same could be paid.*
>
> [Italics ours.]

The one and only purpose the Congress had in view, and all it authorized the Postmaster General to do, was to obtain data from which to determine

by way of a preliminary investigation what was available in systems and apparatus for the more rapid dispatch of mail matter and, further, to ascertain " the relative value " of such systems, apparatus, tubes, or devices and " the adaptability of each " to the service, and, finally, " the cost and advantages " to the Government in the use of the same.

No promise was made or offer held out by the Government to either use or purchase any such system, apparatus, tube, or device, or become otherwise or in any way or manner obligated to pay anything to any person or persons submitting the data called for. On the contrary, due and timely notice was given by the Postmaster General that he had " no authority in law to contract for the expenditure of money for the use of or purchase of any such invention," and by way of further notice he stated, " nor is there any existing appropriation out of which the cost of the same could be paid."

There being " no authority in law " at the time, no contract could have been entered into by the Postmaster General which would bind the Government.

In *Chase* v. *United States* (155 U. S., 489–502) a contract of lease was involved, in which the Government was acting through the Postmaster General, and it was held there that the Postmaster General could not bind the United States as a party unless the contract was authorized by law and the

power to so bind the Government was derived from a statute. Mr. Justice Harlan delivered the opinion of the court, which reads in part as follows:

> *The only inquiry is, whether the contract of lease was "authorized by law"* within the meaning of the statute relating to contracts or purchases on behalf of the Government.
>
> * * * * *
>
> While the Postmaster General, under the power to establish post offices, may designate places, that is, the localities, at which the mails are to be received, *he cannot bind the United States by any lease or purchase of a building to be used for the purposes of a post office, unless the power to do so is derived from a statute which either expressly or by necessary implication authorizes him to make such lease or purchase.* [Italics ours.]

In view of this ruling, it is respectfully submitted that in the present case the Postmaster General was equally unable, for the same reason, to make the Government a party to a contract for the payment of money.

See also *Hooe* v. *United States*, 43 C. Cls., 245; 218 U. S., 322, and *Whiteside et al.* v. *United States*, 93 U. S., 247.

As further safeguarding the interests of the Government and to free it of any and all obligations, if any could arise, in connection with receiving and considering proposals submitted in answer

to the advertisement, the Postmaster General stated in the sixth paragraph of the advertisement:

> The right is reserved to decline any test of any tube or device submitted in response to this advertisement, and to reject any proposal that may be made.

In submitting data and proposals in answer to the advertisement, the law will presume that the several parties, eight in all, agreed to be and were bound by the terms of the advertisement. Certainly appellant is not in position to raise the question, as he voluntarily waived the right, if he had any, to be heard on this point, by the statement in his letter of September 1, 1892, to Hon. John Wanamaker (Rec., p. 26) as follows:

> Please file and consider said proposals in accordance with the terms of said advertisement.

As stated in the opinion of the court below (Rec., p. 37)—

> On the face of the act carrying a small appropriation for an examination into the subject there was no authority given by the law-making power to any of its officers or agents to bind the Government to anything. The act carried its own limitations and plaintiff was bound to know this independent of the advertisement. In the experimental stage of the matter, which Congress wisely provided for, the Postmaster General was without authority to contract with anybody

for the permanent use or purchase of any kind of a patent which would bind the Government to pay anything.

The advertisement published by the Postmaster General and appellant's letter above referred to, we believe to be sufficient in themselves to constitute a complete defense to this action.

We have here a request by the Government for an offer followed by a proposal on the part of appellant, but as there was no acceptance by the Government, which the offer specifically required, no liability arose whereby the United States could be bound.

> An offer to sell imposes no obligations until accepted according to its terms. (*Minneapolis & St. L. R. Co.* v. *Columbus Rolling Mill Co.*, 119 U. S., 149; 7 Sup. Ct. Rec. 168.)
>
> An offer imposes no obligation unless it is accepted upon the terms on which it is made. (*Tilley* v. *Chicago* (*Tilley* v. *Cook County*), 103 U. S., 155.)

The advertisement by the Post Office Department and the appellant's bid or proposal in relation thereto constitute no agreement on the part of the Government to pay appellant anything, and the correspondence between the parties discloses no such agreement.

In addition to the limitations of the act of July 3, 1892, which will be presumed to have been within the knowledge of appellant, notice was given

in the advertised terms of the request for an offer, which clearly define and establish the position of the Government and were doubtless fully stated as a protection against and in anticipation of just such claims as appellant is making in this case. In fact, they are the very terms appellant consented to and agreed to be bound by when he submitted his bid or proposal, and he can not now be heard to complain that he was not fully informed at the outset of the intention, purpose, and position of the Government in publishing the advertisement.

In the case of *South Boston Iron Co.* v. *The United States* (118 U. S., 37–42) this court, speaking by Chief Justice Waite, said:

> An effort has been made in this case to show a contract in writing, but we agree entirely with the Court of Claims that the papers relied on for that purpose are nothing more in law or in fact than the preliminary memoranda made by the parties for use in preparing a contract for execution in the form required by law. This was never done, and therefore the United States never became bound.

Undoubtedly the first element essential to the formation of a contract is a distinct communication between the parties—i. e., an offer by one and acceptance thereof by the other, and where there is no acceptance there is no contract.

Appellant having failed to show assent and acceptance by the Government of his proposal in

accordance with its terms, it follows that he has also failed to prove an express contract for which he contends, and it only remains, therefore, to consider the question of implied contract.

No Implied Contract.

It would seem clear here that no implied contract with the Government can arise from the action of an officer who is not authorized under the statute above cited to make an express contract, but appellant appears to rest his case largely upon an implied contract.

After voluntarily consenting to have his proposal considered " in accordance with the terms of the advertisement," appellant has, in total disregard of and contrary to such terms, endeavored to urge upon the court that what he submitted to the Postmaser General was a deed of conveyance which operated to transfer his patents to the Government and deprive him of the use of the same, and that the act of the Postmaster General in retaining the alleged deed and his further alleged act in entering into the use and enjoyment of the devices of the patents made the Government a party to and liable under an implied contract for the payment of twenty million dollars. This appears to be nothing more nor less than an attempt on the part of appellant to thrust a contract upon

the Government. As stated in *Monroe* v. *United States* (35 C. C. R., 199):

> No man can thrust a contract upon another. There must be agreement or something from which agreement can be inferred—request, acquiescence, knowledge, or the retention of a consideration which can be returned. A contract can not be implied from the voluntary acts of only one party.

"Deed of Conveyance."

Appellant is clearly wrong in his contention relative to the legal effect which should be given to the fact that his bid or proposal submitted to the Postmaster General in response to the advertisement published was under seal. He may have submitted a sealed bid or proposal, and yet it can not be seriously urged that its effect was that of a deed of conveyance. To give it such effect would be inconsistent with and contrary to the terms of the proposal itself, which provide that in order to be binding upon appellant there must be acceptance by the Government of *one of the several propositions therein stated* and notice of such acceptance to appellant within a specified period of time.

If appellant's proposal without a seal was not a "deed of conveyance," the addition of the seal did not make it one. If intended to transfer patents, the seal did not give it any additional force or effect.

> Assignments of patents are not required to be under seal. (*Gottfried* v. *Miller*, 104 U. S., 521.)

It may be stated further that the contention of appellant that the presence of a seal converts his proposal into a deed of conveyance appears to have been an afterthought on his part: as, in his letter to the Postmaster General of August 20, 1892 (Rec., p. 13), he states:

> I also desire to accompany said description with a proposal *offering* to license to or otherwise invest in the United States the right to use the tube or device, to lease by the year or to sell, assign, and transfer it to the United States as a purchaser, *pursuant to your advertisement* dated July 26th, 1892, entitled "Mail service by pneumatic tubes or other systems."
>
> [Italics ours.]

Here appellant has adopted the language of the advertisement published by the Post Office Department and states it to be his desire to submit an offer pursuant to the advertisement.

Appellant's Proposal Retained.

As appears by the seventh finding, the data and proposals submitted were considered by a committee of three expert postal officials appointed by the Postmaster General, and in the report of this committee (Rec., pp. 28-30) claimant's proposal is last in the order stated, being "No. 8," and is referred to as follows:

> No. 8.—James W. Beach and the Beach Pneumatic Conveyor Company, Chicago. Will make contract to construct experi-

> mental line for a consideration to be mutually agreed upon. Will sell or lease. Experimental line to be in readiness in from four to twelve months from October 1, 1892.

As stated in the report, the committee found the offer submitted by the Pneumatic Transit Company of New Jersey, to be the best received, and as it was free of objections and met all requirements, its prompt acceptance was recommended. Pursuant to the report and recommendation, the Postmaster General entered into a contract with the Pneumatic Transit Company of New Jersey (Rec., pp. 30–32) for the installation and operation of an experimental plant for one year, without cost or expense to the Government.

In its report the committee states (Rec., p. 30) that in recommending that the proposal of the Pneumatic Transit Company be accepted, it should be understood that the merits of the system had not been passed upon, "that being a matter for consideration hereafter; in like manner as it will be our purpose to give consideration to each one of the systems that have been submitted."

Appellant's proposal and the others submitted were, therefore, neither accepted nor rejected, but were held for future consideration, awaiting the outcome of the test of the experimental line to be built and operated by the Pneumatic Transit Company.

In retaining the proposals in the files of the department the Postmaster General was acting in

accordance with the requirements of Sec. 3948 of Revised Statutes, as amended.

> SEC. 2. Section thirty-nine hundred and forty-eight of the Revised Statutes is hereby amended, so as to read as follows:
>
> "SEC. 3948. The Postmaster General shall have recorded, in a book to be kept for that purpose, a true and faithful abstract of all proposals made to him for carrying the mail, giving the name of the party offering, the terms of the offer, the sum to be paid, and the time the contract is to continue; and he shall put on file and preserve the originals of all such proposals until the end of the contract term to which they relate, after which the proposals that were not accepted may be destroyed or disposed of as waste paper. (4.)" (Chap. 436, sec. 2.)

Appellant is manifestly in error in his contention that the act of the Postmaster General in retaining the submitted proposal operated as a conclusive presumption of acceptance by the Government. According to the terms of the proposal, the Postmaster General was given a specified time in which to notify appellant of the acceptance of his proposal, and in the event of failure of such notice of acceptance within the time stated, the offer or proposal thereupon ceased to be binding upon appellant.

The clause of the proposal referred to reads as follows (Rec., p. 16):

> *This proposal is made upon the condition, and the same shall not be binding upon the undersigned, unless* the United States shall, by the Postmaster General, accept said propositions, or one of said propositions, and shall notify me, the undersigned, of said acceptance on or before the first day of August, A. D. 1893.
>
> [Italics ours.]

Apparatus Employed by the Government.

Appellant appears to be laboring under the impression that he is a pioneer inventor in the art relating to pneumatic transportation of mail matter, but the only evidence he offers in proof is to be found in two United States patents granted to him, which are numbered and dated as follows: 267318, November 14, 1882; 444038, January 6, 1891. (Rec., p. 10, Findings II and III.)

If appellant's patents are valid (a question not at issue in this case), the best that can be said for them is that they are mere improvement patents and are not broad or generic in any sense of the term.

As appears by the fourth finding (Rec., pp. 11 and 12), there were ten patents issued by the United States Patent Office prior to the filing of the application for either of appellant's patents; and, as held by the court below (Rec., p. 39), the disclo-

sure in a number of these prior patents more closely resembles the apparatus used by the Government than does appellant's patented apparatus.

In failing to call an expert to explain his patents for the information and guidance of the court below, appellant left it to that court to determine what the patents disclose and whether or not the claims thereof read on and are answered by the system or apparatus employed by the Government, in view of the prior art of record. On this point the court found for the Government.

Appellant further contends that his patented system or apparatus and that employed by the Government are identical, but he was unable to convince the court below as to the truth of this contention.

The court discusses this point of identity of structures (Rec., pp. 39–40), the opinion reading in part as follows:

> These (referring to certain patented inventions of one Batcheller, an engineer) are novel improvements upon all preceding inventions. Some, at least, of these improvements (and it may be all) are in use under the present system. These, together with various parts of the mechanism derived from other inventions and notably the devices described in Siemen's patent, seem to us to have been used by the contracting company. We do not definitely decide that they were so used, but in the effort to show that plaintiff's property was appropriated, espe-

> cially in the material allegations respecting the wave motion of plaintiff's inventions (upon which he largely rests his case), seems to be wanting in the element of identity with the tubes and mechanism finally combined and put into actual use by other agencies.

In *Fletcher* v. *United States* (11 C. C., 748), affirmed by this court (131 U. S., Appendix CXCVII), substantially the same state of facts will be found as appear in this case. There an advertisement was published by the Commissioner of Internal Revenue for an offer, followed by the submission of a patented invention by claimant in reply, and subsequent adoption and use by the Government of the device of another party, but alleged by claimant to be the device of his patent.

The opinion of the Court of Claims in that case was delivered by his honor Judge Loring, and reads in part as follows:

> The learned counsel for the petitioner rested their case on a contract between him and the United States, and the point is stated in their brief as follows: "By the advertisement for designs, the submission by the plaintiff of the stamp, and the adoption and use thereof by the Government, an implied contract was created, and the defendant is bound to pay a reasonable compensation for the use of the invention."
>
> We think the answer to this is that made at the bar, that the Government did not use the petitioner's stamp nor contract with him.

The facts being substantially similar in this case, the same answer would seem to apply.

On the theory of express contract, appellant's case fails by reason of the fact that there was no acceptance by the Government within the time and in the manner specified in the offer submitted.

On the theory of implied contract, appellant's case likewise fails, for the following reasons:

First. That appellant's proposal was not a deed of conveyance, nor was it intended as such, and did not pass title or any other interest in the patents to the Government, but, on the contrary, it was a mere offer, limited as to time and manner of acceptance;

Second. That in retaining and filing appellant's proposal the Postmaster General was acting under the requirements of a statute and also in accordance with the terms of the proposal itself, which made the offer a continuing one, subject to acceptance by the Government at any time on or before the first day of August, 1893;

Third. That there was " no authority in law to contract for the expenditure of money for the use or purchase of any such invention " and no "existing appropriation out of which the cost of the same could be paid ";

Fourth. That the act of the Postmaster General in contracting, at no expense to the Government, with a company with which appellant had no connection, for the installation and operation of an

experimetal pneumatic-tube system, was not such an act as would establish an implied acceptance of any one of the several propositions submitted by appellant;

Fifth. That appellant has failed to prove that he is the inventor of the pneumatic-tube system employed by the Government; and

Sixth. That appellant has failed to prove that the pneumatic-tube system employed by the Government and that disclosed in his patents are either identical or that the first-mentioned system is within the claims of his patents.

GENERAL REMARKS.

Appellant makes thirty-five assignments of error. (Record, pp. 46 to 50, inclusive.) We hesitate to enter into a discussion of these various alleged errors for the reason that they are repetitions and mostly irrelevant, incompetent, and immaterial. As we have suggested, everything in this case can properly be presented under appellant's first and second assignments of error.

Furthermore, the record contains statements wholly irrelevant to the trial of the issue here raised, and pages 51 to 65, inclusive, should be absolutely disregarded. Indeed, appellant's brief is largely based upon this irrelevant matter, a cursory examination of which, we believe, will convince the court that it should be stricken from the record.

For the reasons we have given we think the judgment of the court below in dismissing the petition was correct, and we ask that it be affirmed.

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